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# ONTARIO LABOUR RELATIONS BOARD REPORTS



**December 1994**



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# **ONTARIO LABOUR RELATIONS BOARD REPORTS**

**A Monthly Series of Decisions from the  
Ontario Labour Relations Board**

**Cited [1994] OLRB REP. DECEMBER**

**EDITOR: RON LEBI**

Selected decisions of particular reference value are also reported in *Canadian Labour Relations Boards Reports*, Butterworth & Co., Toronto.



Typeset, Printed and Bound by Union Labour in Ontario







## CASES REPORTED

1.	Aquicon Construction Co. Ltd., Bondfield Construction Company (1983) Limited and 352021 Ontario Limited; Re L.I.U.N.A., Local 837 .....	1611
2.	B & D Insulation Inc.; Re HFIA, Local 95.....	1625
3.	Domus Industries Ltd.; Re PAT, Local Union 1891 .....	1630
4.	Dualex Enterprises Inc., a division of Depco International Incorporated; Re CAW-Canada; Re Group of Employees.....	1641
5.	Eastern Power Developers Corp.; Re UA, Local Union 46.....	1651
6.	George Jeffrey Children's Treatment Centre; SEU, Local 268.....	1656
7.	James Johnston Mechanical Contracting Ltd.; Re Local Union 47 Sheet Metal Workers' International Association .....	1671
8.	Ombudsman Ontario; Re OPEIU, Local 343.....	1679
9.	Ottawa Board of Education; Re OSSTF .....	1690
10.	The Canadian Red Cross Society; OPSEU; Re Canadian Red Cross Blood Transfusion Service Employees Association .....	1694
11.	Trican Materials Ltd. and Dunhill Contracting Ltd.; Re Teamsters Union Local No. 880 ....	1703
12.	Wendy's Restaurants of Canada Inc.; Re Rebecca Millar and Stacy Fenn; Re Retail Wholesale Canada, Canadian Service Sector Division of United Steelworkers of America, Local 448 .....	1708





## SUBJECT INDEX

Bargaining Unit - Certification - Board not persuaded that union's proposed bargaining unit restricted to teachers of Adult Basic English and English as a Second Language an appropriate bargaining unit OTTAWA BOARD OF EDUCATION; RE OSSTF.....	1690
Bargaining Unit - Certification - OPSEU applying to displace incumbent employees' association - OPSEU asking to be certified in respect of single bargaining unit including full-time and part-time employees - Board finding that incumbent union holding bargaining rights in respect of separate bargaining units for full-time and part-time employees - Board finding that OPSEU's proposed bargaining unit appropriate - Board also finding that ballots of probationary employees cast in pre-hearing representation vote ought to be counted THE CANADIAN RED CROSS SOCIETY; OPSEU; RE CANADIAN RED CROSS BLOOD TRANSFUSION SERVICE EMPLOYEES ASSOCIATION .....	1694
Bargaining Unit - Combination of Bargaining Units - Hospital Labour Disputes Arbitration Act - Reference - Board finding residential care programme of children's treatment centre to be "hospital" within meaning of Hospital Labour Disputes Arbitration Act, and that whole of treatment centre also a "hospital" within meaning of the Act - Union holding bargaining rights for unit of employees working in group homes in residential care programme and for two units of therapists at treatment centre - Union's application to combine bargaining units allowed GEORGE JEFFREY CHILDREN'S TREATMENT CENTRE; SEU, LOCAL 268.....	1656
Certification - Bargaining Unit - Board not persuaded that union's proposed bargaining unit restricted to teachers of Adult Basic English and English as a Second Language an appropriate bargaining unit OTTAWA BOARD OF EDUCATION; RE OSSTF.....	1690
Certification - Bargaining Unit - OPSEU applying to displace incumbent employees' association - OPSEU asking to be certified in respect of single bargaining unit including full-time and part-time employees - Board finding that incumbent union holding bargaining rights in respect of separate bargaining units for full-time and part-time employees - Board finding that OPSEU's proposed bargaining unit appropriate - Board also finding that ballots of probationary employees cast in pre-hearing representation vote ought to be counted THE CANADIAN RED CROSS SOCIETY; OPSEU; RE CANADIAN RED CROSS BLOOD TRANSFUSION SERVICE EMPLOYEES ASSOCIATION .....	1694
Certification - Certification Where Act Contravened - Construction Industry - Interference in Trade Unions - Board finding lay-off of nine employees tainted by anti-union animus - Union certified under section 9.2 of the Act DOMUS INDUSTRIES LTD.; RE PAT, LOCAL UNION 1891 .....	1630
Certification - Charges - Intimidation and Coercion - Membership Evidence - Board finding no substance to allegations that union's conduct created "profound fear" among employees as to whether they should join union - Evidence not supporting conclusion that union collected membership evidence through intimidation or material misrepresentation - Certificate issuing DUALEX ENTERPRISES INC., A DIVISION OF DEPCO INTERNATIONAL INCORPORATED; RE CAW-CANADA; RE GROUP OF EMPLOYEES.....	1641

## II

Certification - Construction Industry - Reconsideration - Board certifying union in ICI and non-ICI bargaining units - Employer applying for reconsideration two weeks later on various grounds including its assertion that it had received an incomplete package of materials from the Board in connection with the union's application and that it had been misled as to its obligations by comments from a clerk at the Board - Application dismissed JAMES JOHNSTON MECHANICAL CONTRACTING LTD.; RE LOCAL UNION 47 SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION.....	1671
Charges - Certification - Intimidation and Coercion - Membership Evidence - Board finding no substance to allegations that union's conduct created "profound fear" among employees as to whether they should join union - Evidence not supporting conclusion that union collected membership evidence through intimidation or material misrepresentation - Certificate issuing DUALEX ENTERPRISES INC., A DIVISION OF DEPCO INTERNATIONAL INCORPORATED; RE CAW-CANADA; RE GROUP OF EMPLOYEES.....	1641
Certification Where Act Contravened - Certification - Construction Industry - Interference in Trade Unions - Board finding lay-off of nine employees tainted by anti-union animus - Union certified under section 9.2 of the Act DOMUS INDUSTRIES LTD.; RE PAT, LOCAL UNION 1891 .....	1630
Combination of Bargaining Units - Bargaining Unit - Hospital Labour Disputes Arbitration Act - Reference - Board finding residential care programme of children's treatment centre to be "hospital" within meaning of Hospital Labour Disputes Arbitration Act, and that whole of treatment centre also a "hospital" within meaning of the Act - Union holding bargaining rights for unit of employees working in group homes in residential care programme and for two units of therapists at treatment centre - Union's application to combine bargaining units allowed GEORGE JEFFREY CHILDREN'S TREATMENT CENTRE; SEU, LOCAL 268.....	1656
Construction Industry - Certification - Certification Where Act Contravened - Interference in Trade Unions - Board finding lay-off of nine employees tainted by anti-union animus - Union certified under section 9.2 of the Act DOMUS INDUSTRIES LTD.; RE PAT, LOCAL UNION 1891 .....	1630
Construction Industry - Certification - Reconsideration - Board certifying union in ICI and non-ICI bargaining units - Employer applying for reconsideration two weeks later on various grounds including its assertion that it had received an incomplete package of materials from the Board in connection with the union's application and that it had been misled as to its obligations by comments from a clerk at the Board - Application dismissed JAMES JOHNSTON MECHANICAL CONTRACTING LTD.; RE LOCAL UNION 47 SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION.....	1671
Construction Industry - Construction Industry Grievance - Board finding and declaring that employer discriminated against union steward and violated collective agreement by failing to offer him opportunity to work overtime on specified date - Grievance allowed B & D INSULATION INC.; RE HFIA, LOCAL 95.....	1625
Construction Industry - Discharge - Discharge for Union Activity - Unfair Labour Practice - Board finding lay-offs of five fitters related to union's certification application and therefore improper - Application allowed EASTERN POWER DEVELOPERS CORP.; RE UA, LOCAL UNION 46 .....	1651
Construction Industry - Sale of a Business - Predecessor company operating as general contractor	



in school construction field in ICI sector - Officers and shareholders of predecessor leaving company to set up new company and entering very same market as predecessor - Applicant delaying six or seven years in bringing application - Board finding sale of a business - Application allowed

AQUICON CONSTRUCTION CO. LTD., BONDFIELD CONSTRUCTION COMPANY (1983) LIMITED AND 352021 ONTARIO LIMITED; RE L.I.U.N.A., LOCAL 837 .....

1611

Construction Industry Grievance - Construction Industry - Board finding and declaring that employer discriminated against union steward and violated collective agreement by failing to offer him opportunity to work overtime on specified date - Grievance allowed

B & D INSULATION INC.; RE HFIA, LOCAL 95.....

1625

Discharge - Construction Industry - Discharge for Union Activity - Unfair Labour Practice - Board finding lay-offs of five fitters related to union's certification application and therefore improper - Application allowed

EASTERN POWER DEVELOPERS CORP.; RE UA, LOCAL UNION 46 .....

1651

Discharge - Discharge for Union Activity - Practice and Procedure - Unfair Labour Practice - Union filing unfair labour practice complaint under section 92.2 of the Act - Employer failing to reply to union's application, but attending at Board on day of hearing - Board not permitting employer additional time to file response - Board determining matter solely on materials filed by applicant - Application allowed and reinstatement with compensation ordered

TRICAN MATERIALS LTD. AND DUNHILL CONTRACTING LTD.; RE TEAMSTERS UNION LOCAL NO. 880 .....

1703

Discharge - Just Cause - Unfair Labour Practice - Board finding that some discipline warranted for employee's carelessness, but that other allegations not made out on the evidence - Employer found to have disciplined and discharged employee without just cause contrary to section 81.2 of the Act - Written warning substituted for discharge and for various other disciplinary notations - Reinstatement with compensation ordered - Application allowed

OMBUDSMAN ONTARIO; RE OPEIU, LOCAL 343 .....

1679

Discharge for Union Activity - Construction Industry - Discharge - Unfair Labour Practice - Board finding lay-offs of five fitters related to union's certification application and therefore improper - Application allowed

EASTERN POWER DEVELOPERS CORP.; RE UA, LOCAL UNION 46 .....

1651

Discharge for Union Activity - Discharge - Practice and Procedure - Unfair Labour Practice - Union filing unfair labour practice complaint under section 92.2 of the Act - Employer failing to reply to union's application, but attending at Board on day of hearing - Board not permitting employer additional time to file response - Board determining matter solely on materials filed by applicant - Application allowed and reinstatement with compensation ordered

TRICAN MATERIALS LTD. AND DUNHILL CONTRACTING LTD.; RE TEAMSTERS UNION LOCAL NO. 880 .....

1703

Hospital Labour Disputes Arbitration Act - Bargaining Unit - Combination of Bargaining Units - Reference - Board finding residential care programme of children's treatment centre to be "hospital" within meaning of Hospital Labour Disputes Arbitration Act, and that whole of treatment centre also a "hospital" within meaning of the Act - Union holding bargaining rights for unit of employees working in group homes in residential care programme and for

two units of therapists at treatment centre - Union's application to combine bargaining units allowed	
GEORGE JEFFREY CHILDREN'S TREATMENT CENTRE; SEU, LOCAL 268.....	1656
Interference in Trade Unions - Certification - Certification Where Act Contravened - Construction Industry - Board finding lay-off of nine employees tainted by anti-union animus - Union certified under section 9.2 of the Act	
DOMUS INDUSTRIES LTD.; RE PAT, LOCAL UNION 1891 .....	1630
Intimidation and Coercion - Certification - Charges - Membership Evidence - Board finding no substance to allegations that union's conduct created "profound fear" among employees as to whether they should join union - Evidence not supporting conclusion that union collected membership evidence through intimidation or material misrepresentation - Certificate issuing	
DUALEX ENTERPRISES INC., A DIVISION OF DEPCO INTERNATIONAL INCORPORATED; RE CAW-CANADA; RE GROUP OF EMPLOYEES.....	1641
Just Cause - Discharge - Unfair Labour Practice - Board finding that some discipline warranted for employee's carelessness, but that other allegations not made out on the evidence - Employer found to have disciplined and discharged employee without just cause contrary to section 81.2 of the Act - Written warning substituted for discharge and for various other disciplinary notations - Reinstatement with compensation ordered - Application allowed	
OMBUDSMAN ONTARIO; RE OPEIU, LOCAL 343 .....	1679
Membership Evidence - Certification - Charges - Intimidation and Coercion - Board finding no substance to allegations that union's conduct created "profound fear" among employees as to whether they should join union - Evidence not supporting conclusion that union collected membership evidence through intimidation or material misrepresentation - Certificate issuing	
DUALEX ENTERPRISES INC., A DIVISION OF DEPCO INTERNATIONAL INCORPORATED; RE CAW-CANADA; RE GROUP OF EMPLOYEES.....	1641
Petition - Termination - Board finding that signatures on reaffirmations signifying voluntary expression of those employees in support of union - Less than forty-five per cent of employees, as of terminal date, applying for termination of bargaining rights - Application dismissed	
WENDY'S RESTAURANTS OF CANADA INC.; RE REBECCA MILLAR AND STACY FENN; RE RETAIL WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF UNITED STEELWORKERS OF AMERICA, LOCAL 448.....	1708
Practice and Procedure - Discharge - Discharge for Union Activity - Unfair Labour Practice - Union filing unfair labour practice complaint under section 92.2 of the Act - Employer failing to reply to union's application, but attending at Board on day of hearing - Board not permitting employer additional time to file response - Board determining matter solely on materials filed by applicant - Application allowed and reinstatement with compensation ordered	
TRICAN MATERIALS LTD. AND DUNHILL CONTRACTING LTD.; RE TEAMSTERS UNION LOCAL NO. 880 .....	1703
Reconsideration - Certification - Construction Industry - Board certifying union in ICI and non-ICI bargaining units - Employer applying for reconsideration two weeks later on various grounds including its assertion that it had received an incomplete package of materials from	



the Board in connection with the union's application and that it had been misled as to its obligations by comments from a clerk at the Board - Application dismissed	
JAMES JOHNSTON MECHANICAL CONTRACTING LTD.; RE LOCAL UNION 47 SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION.....	1671
Reference - Bargaining Unit - Combination of Bargaining Units - Hospital Labour Disputes Arbitration Act - Board finding residential care programme of children's treatment centre to be "hospital" within meaning of Hospital Labour Disputes Arbitration Act, and that whole of treatment centre also a "hospital" within meaning of the Act - Union holding bargaining rights for unit of employees working in group homes in residential care programme and for two units of therapists at treatment centre - Union's application to combine bargaining units allowed	
GEORGE JEFFREY CHILDREN'S TREATMENT CENTRE; SEU, LOCAL 268.....	1656
Sale of a Business - Construction Industry - Predecessor company operating as general contractor in school construction field in ICI sector - Officers and shareholders of predecessor leaving company to set up new company and entering very same market as predecessor - Applicant delaying six or seven years in bringing application - Board finding sale of a business - Application allowed	
AQUICON CONSTRUCTION CO. LTD., BONDFIELD CONSTRUCTION COMPANY (1983) LIMITED AND 352021 ONTARIO LIMITED; RE L.I.U.N.A., LOCAL 837 .....	1611
Termination - Petition - Board finding that signatures on reaffirmations signifying voluntary expression of those employees in support of union - Less than forty-five per cent of employees, as of terminal date, applying for termination of bargaining rights - Application dismissed	
WENDY'S RESTAURANTS OF CANADA INC.; RE REBECCA MILLAR AND STACY FENN; RE RETAIL WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF UNITED STEELWORKERS OF AMERICA, LOCAL 448.....	1708
Unfair Labour Practice - Construction Industry - Discharge - Discharge for Union Activity - Board finding lay-offs of five fitters related to union's certification application and therefore improper - Application allowed	
EASTERN POWER DEVELOPERS CORP.; RE UA, LOCAL UNION 46 .....	1651
Unfair Labour Practice - Discharge - Discharge for Union Activity - Practice and Procedure - Union filing unfair labour practice complaint under section 92.2 of the Act - Employer failing to reply to union's application, but attending at Board on day of hearing - Board not permitting employer additional time to file response - Board determining matter solely on materials filed by applicant - Application allowed and reinstatement with compensation ordered	
TRICAN MATERIALS LTD. AND DUNHILL CONTRACTING LTD.; RE TEAMSTERS UNION LOCAL NO. 880 .....	1703
Unfair Labour Practice - Discharge - Just Cause - Board finding that some discipline warranted for employee's carelessness, but that other allegations not made out on the evidence - Employer found to have disciplined and discharged employee without just cause contrary to section 81.2 of the Act - Written warning substituted for discharge and for various other disciplinary notations - Reinstatement with compensation ordered - Application allowed	
OMBUDSMAN ONTARIO; RE OPEIU, LOCAL 343 .....	1679



**0422-93-G; 3708-93-G; 0447-94-G; 0469-93-G; 3815-92-R; 3707-93-G; 0942-93-G; 0943-93-R; 3709-93-G; 0444-94-G; 0445-94-G; 3169-92-R; 3170-92-G; 3682-92-G; 3685-92-R; 1358-94-G; 0446-94-G; 0992-94-G; 1286-94-G** Labourers' International Union of North America, Local 837, Applicant v. **Aquicon Construction Co. Ltd.**, Bondfield Construction Company (1983) Limited and 352021 Ontario Limited, Responding Parties; United Brotherhood of Carpenters and Joiners of America, Local 18, Applicant v. **Aquicon Construction Co. Ltd.**, Bondfield Construction Company (1983) Limited and 352021 Ontario Limited, Responding Parties; Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftsmen, Applicant v. **Aquicon Construction Co. Ltd.**, Bondfield Construction Company (1983) Limited and 352021 Ontario Limited, Responding Parties; Labourers' International Union of North America, Local 506, Applicant v. **Aquicon Construction Co. Ltd.**, Bondfield Construction Company (1983) Limited and 352021 Ontario Limited, Responding Parties; International Union of Operating Engineers, Local 793, Applicant v. **Aquicon Construction Co. Ltd.**, Bondfield Construction Company (1983) Limited and 352021 Ontario Limited, Responding Parties; Labourers' International Union of North America, Local 1081 v. **Aquicon Construction Co. Ltd.**, Bondfield Construction Company (1983) Limited and 352021 Ontario Limited, Responding Parties; International Union of Bricklayers and Allied Craftsmen, Local 12, Applicant v. **Aquicon Construction Co. Ltd.**, Bondfield Construction Company (1983) Limited and 352021 Ontario Limited, Responding Parties

**Construction Industry - Sale of a Business - Predecessor company operating as general contractor in school construction field in ICI sector - Officers and shareholders of predecessor leaving company to set up new company and entering very same market as predecessor - Applicant delaying six or seven years in bringing application - Board finding sale of a business - Application allowed**

**BEFORE:** *Inge M. Stamp*, Vice-Chair, and Board Members *F. B. Reaume* and *G. McMenemy*.

**APPEARANCES:** *A. M. Minsky* on behalf of all the applicants; *Armando Camara* on behalf Labourers' International Union of North America, Local 506; *P. Settini* on behalf of Labourers' International Union of North America, Local 837; *J. Anderson* on behalf of International Union of Operating Engineers, Local 793; *B. Veitch* on behalf of United Brotherhood of Carpenters and Joiners of America, Local 18; *J. Robbins* on behalf of International Union of Bricklayers and Allied Craftsmen; *Joseph Liberman*, *Frank Aquino* and *Mario Aquino* on behalf of **Aquicon Construction Co. Ltd.**; *Angela E. Rae* and *Ralph Aquino* on behalf of Bondfield Construction Company (1983) Limited and 352021 Ontario Limited.

**DECISION OF THE BOARD;** December 30, 1994

1. These are a number of related applications under sections 64/1(4) and 126 of the *Labour Relations Act*. The applicant trade unions allege that there has been a transfer of a business within the meaning of section 64 from Bondfield Construction Company (1983) Limited (hereinafter referred to as "Bondfield") to **Aquicon Construction Co. Ltd.** (hereinafter referred to as "Aquicon"). In addition or in the alternative the applicants assert the two companies are engaged in



related activities, under common control and direction and should be treated as one employer pursuant to section 1(4) of the Act. It was agreed to defer all of the section 126 referrals until the section 64/1(4) has been adjudicated.

2. Sections 1(4) and 64(1) (1.1) (2) of the Act provide as follows:

1.- (4) Where, in the opinion of the Board, associated or related activities or businesses are carried on, whether or not simultaneously, by or through more than one corporation, individual, firm, syndicate or association or any combination thereof, under common control or direction, the Board may, upon the application of any person, trade union or council of trade unions concerned, treat the corporations, individuals, firms, syndicates or associations or any combination thereof as constituting one employer for the purposes of this Act and grant such relief, by way of declaration or otherwise, as it may deem appropriate.

64.(1) In this section,

“business” includes one or more parts of a business; (“entreprise”)

“predecessor employer” means an employer who sells his, her or its business; (“employeur précédent”)

“sells” includes leases, transfers and any other manner of disposition; (“vend”)

“successor employer” means an employer to whom the predecessor employer sells the business. (“employeur qui succède”)

(1.1) This section applies when a predecessor employer sells a business to a successor employer.

(2) If the predecessor employer is bound by a collective agreement, the successor employer is bound by it as if the successor employer were the predecessor employer, until the Board declares otherwise.

3. The evidence is not in dispute as far as it relates to the chronology of events and the documentation provided by the responding parties. What is in dispute is the three brothers' evidence regarding the degree of involvement in the decision-making process and the running of Bondfield by Frank and Mario Aquino.

4. The parties put before the Board a partial agreed statement of facts subject to each parties' right to lead other evidence, to add or qualify the agreed statement of facts. The parties further indicated that there may be some facts in dispute (other than those agreed to). The partial agreed statement of facts is set out below:

PARTIAL AGREED STATEMENT OF FACTS

1. The Responding party, Bondfield Construction Company (1983) Limited (“Bondfield”) was incorporated on March 7, 1973 under the name Raljon Construction Company Limited and has carried on business as a General Contractor in Ontario since that time.
2. At the time Bondfield was incorporated, Bondfield's sole Director was Ralph Aquino, (“Ralph”) and its Officers were Ralph, who was President, and Ida Aquino, (“Ida”) who was Secretary Treasurer.
3. Ralph was the sole Shareholder and Director of Bondfield when it was initially incorporated.
4. In 1976, Frank Aquino, (“Frank”), Ralph's brother, joined Bondfield.

5. On January 10, 1979, Frank was made General Manager of Bondfield. Frank was removed as General Manager of Bondfield on April 19, 1979, at which point Ralph assumed the title of President and General Manager of Bondfield.
6. In 1980, Mario Aquino ("Mario"), brother to Frank and Ralph, joined Bondfield.
7. On January 30, 1981, Frank acquired 30 common shares of Bondfield, and Mario acquired 19 common shares of Bondfield. Ralph retained the remaining 51 common shares of Bondfield, and also acquired 100 class "A" shares of Bondfield on January 29, 1982.
8. Raljon Construction Co. Limited changed its name to Bondfield Construction Company (1983) Limited effective December 30, 1983.
9. Frank was named Secretary Treasurer of Bondfield in February 1984 and was thereby granted signing authority in accordance with exhibits A.5. On May 29, 1984, Ida was once again named Secretary Treasurer according to the Corporate Minute Books.
10. On February 7, 1984, Frank and Mario were also made Directors of Bondfield.
11. Frank acquired signing authority on behalf of Bondfield on March 12, 1986, according to the Corporate Minute Books (banking resolution of Directors dated March 12, 1986, Exhibit A-1). Prior to that time, however, Frank signed documents from time to time including contracts and cheques, on behalf of Bondfield.
12. On September 30, 1986, Frank and Mario resigned as Directors of Bondfield.
13. The Responding party, 352021 Ontario Limited ("352021") was incorporated under the name of Bondfield Construction Company Limited on February 4, 1977.
14. At the time of incorporation of 352021, Ralph and Frank were Directors of the Company. Furthermore, Ralph was made President of the Company at the time of incorporation, and Frank was made Secretary Treasurer of the Company at that time. Frank was granted signing authority in accordance with the Banking Resolution dated February 4, 1977 found in exhibit A.2. At the outset, Ralph was the sole Shareholder of 352021.
15. On January 30, 1981, Frank acquired 30 common shares in 352021, and Mario acquired 19 common shares in 352021 with 51 shares to Ralph.
16. On February 2, 1982, Frank resigned as Director of 352021.
17. On December 30, 1983, 352021's name was changed from Bondfield Construction Company Limited to 352021 Ontario Limited. Since that time, 352021 has not been actively engaged in the construction industry.
18. On January 17, 1986, Frank and Mario were made Directors of 352021, and on September 30, 1986, they resigned as Directors. As well, Frank resigned as Secretary Treasurer on September 30, 1986.
19. Aquicon Construction Company Limited ("Aquicon") was incorporated on November 6, 1986. At all material times, Frank and Mario held either directly or indirectly, through their jointly held holding company 921739 Ontario Limited, all of the shares of Aquicon.
20. As a result of serious unhappy circumstances between Ralph, Frank, and Mario, an agreement was entered into to transfer the shares held by Frank and Mario in Bondfield and 352021 to Aquicon on January 5, 1987.
21. By an agreement dated as of November 15, 1986, Ralph, Frank, Mario, Bondfield, 352021, and Aquicon consented to the transfer of all the common shares held by

Frank and Mario in Bondfield and 352021 to Aquicon with Bondfield and 352021 redeeming those shares from Aquicon and with Aquicon transferring all of such shares to Bondfield and 352021 in consideration of the payment by them to Aquicon of the sums of approximately \$297,000.00 and \$105,000.00 respectively, together with three vehicles which were to be transferred from Bondfield and/or 352021 to Aquicon.

22. At some point in time, equipment was transferred from Bondfield and/or 352021 to Aquicon which consisted of a transit, a generator, a table saw, two levels, a chipping hammer, two trailers, a typewriter, and a plate.
23. The parties to the agreement dated as of November 15, 1986 entered into a further agreement dated January 5, 1987 whereby they agreed to amend the agreement dated November 15, 1986 to provide, *inter alia* that Bondfield, 352021 and Aquicon would be associated corporations in 1987 within the meaning of Section 256(1)(d) of the *Income Tax Act*. The transaction closed on January 5, 1987 in accordance with the Agreement dated as of November 15, 1986 as amended by the January 5, 1987 Agreement.
24. Frank and Mario Aquino commenced the operation of Aquicon in or about the end of January 1987. The Company is engaged as a General Contractor in the construction industry in the province of Ontario.
25. At all material times to the within applications, both Bondfield and 352021 have been, and still are, bound to the provincial collective agreements in the I.C.I. sector of the construction industry with the United Brotherhood of Carpenters and Joiners of America, the International Union of Operating Engineers, the Labourers' International Union of North America and the International Union of Bricklayers and Allied Craftsmen.
26. From January 1987 to the date of these proceedings, both Bondfield and Aquicon have operated as General Contractors and have performed work in the I.C.I. sector of the construction industry.
27. From in or about January 1987, the volume of work performed by both Bondfield and Aquicon has grown.
28. Prior to the current applications before the Board, there have been no proceedings brought by any of the applicants against Aquicon at the Board.

With respect to paragraph 22 of the above statement there is disagreement as to when and for what purpose the equipment was transferred.

5. In January 1981 Ralph Aquino gave thirty common shares to Frank and nineteen common shares to Mario and retaining fifty-one shares. The resolution dated January 30, 1981 reads as follows:

RALJON CONSTRUCTION CO. LIMITED

RESOLUTIONS of the BOARD OF DIRECTORS of RALJON CONSTRUCTION CO. LIMITED passed by the consent of the sole Director on the 30th day of January, 1981.

FORM OF SHARE CERTIFICATES

RESOLVED THAT:

1. The form of Share Certificate for the Class A special shares with a par value of 1¢ each, as attached hereto as Schedule "A" and initialled by the President for identification, be and the same is hereby approved and adopted as the form of such Share Certificate of the Corporation; and



2. The form of Share Certificate for the Class B special share with a par value of \$10.00 each, as attached hereto as Schedule "B" and initialled by the President for identification, be and the same is hereby approved and adopted as the form of such Share Certificate of the Corporation.

#### ISSUANCE AND ALLOTMENT OF SHARES

##### RESOLVED THAT:

ONE HUNDRED (100) common shares with a par value of \$1.00 each in the capital stock of the Corporation be allotted and issued to the Parties whose names appear hereafter, at the price of \$1.00 per share and that the Corporation having received the sum of \$100.00 in respect of such shares, the said one hundred (100) common shares with a par value of \$1.00 each are hereby declared to be fully paid and non-assessable shares and that the following certificates be issued to each of RALPH AQUINO, FRANK AQUINO and MARIO AQUINO as follows:

RALPH AQUINO	51 COMMON SHARES
FRANK AQUINO	30 " "
MARIO AQUINO	19 " "
TOTAL:	<u>100 COMMON SHARES</u>

Each and every of the foregoing resolutions is hereby consented to by the signature of the sole Director of the Corporation hereto pursuant to The Business Corporations Act, 1970.

DATED this 30th day of January, 1981.

"Ralph Aquino"  
RALPH AQUINO

Each of the foregoing resolutions is hereby consented to by the signature of the sole Shareholder of the Corporation hereto pursuant to The Business Corporation Act, 1970.

DATED this 30th day of January, 1981.

"Ralph Aquino"  
RALPH AQUINO

RESOLUTION of the Shareholders of the above-noted corporation passed by the consent of all of the Shareholders on the 17th day of January, 1986.

#### ELECTION OF DIRECTORS

RESOLVED THAT Frank Aquino and Mario Aquino be and they are hereby elected Directors of the Corporation until the next annual meeting of shareholders of the Corporation or until their respective successors are elected or appointed.

The foregoing resolution is hereby consented to by all of the Shareholders of the Corporation.

DATED this 17th day of January, 1986.

<u>"Ralph Aquino"</u>	<u>"Frank Aquino"</u>	<u>"Mario Aquino"</u>
RALPH AQUINO	FRANK AQUINO	MARIO AQUINO

#### CONSENT TO ACT AS DIRECTOR

TO: BONDFIELD CONSTRUCTION COMPANY (1983) LIMITED

I, the undersigned, hereby consent to act as Director of the above Corporation, such consent to

continue from time to time until a date upon which I, the undersigned, give my respective written notice to the Corporation revoking such consent or cease to be Director of said Corporation.

DATED this 17th day of January 1986.

"Mario Aquino"  
MARIO AQUINO

CONSENT TO ACT AS DIRECTOR

TO: BONDFIELD CONSTRUCTION COMPANY (1983) LIMITED

I, the undersigned, hereby consent to act as Director of the above Corporation, such consent to continue from time to time until a date upon which I, the undersigned, give my respective written notice to the Corporation revoking such consent or cease to be Director of said Corporation.

DATED this 17th day of January 1986.

"Frank Aquino"  
FRANK AQUINO

6. A banking resolution dated March 12, 1986 signed by all three Directors shows Frank Aquino having signing authority for Bondfield's bank account.
7. On the 30th of September 1986 the shareholders of Bondfield passed a resolution accepting Frank and Mario's resignation as Directors of Bondfield.
8. Resolutions of the sole Director of Bondfield were passed January 5, 1987 as follows:

BONDFIELD CONSTRUCTION COMPANY (1983) LIMITED

RESOLUTION of the sole Director of Bondfield Construction Company (1983) Limited passed by the consent of the sole Director on the 5th day of January, 1987.

WHEREAS Aquicon Construction Co. Ltd. is the owner of forty-nine (49) issued and outstanding common shares in the capital of the Corporation;

AND WHEREAS Aquicon Construction Co. Ltd. is desirous of selling its shares in the capital of the Corporation to the Corporation.

BE IT RESOLVED that the Corporation do pay to Aquicon Construction Co. Ltd. the sum of \$297,677.87 and that the Corporation do deliver to Aquicon Construction Co. Ltd. one 1986 Toyota pick up truck S/N JT4LN55D2G007006 and one 1985 Pontiac 6LE S/N 2G2AG19X6F9702946 in consideration of the transfer of the aforesaid shares.

BE IT FURTHER RESOLVED that the share certificate of Aquicon Construction Co. Ltd. for forty-nine (49) common shares in the capital of the Corporation be and the same is hereby cancelled.

The foregoing resolution is hereby consented to by the signature of the sole Director of the Corporation.

DATED this 5th day of January, 1987.

"Ralph Aquino"  
RALPH AQUINO

BONDFIELD CONSTRUCTION COMPANY (1983) LIMITED

RESOLUTION of the sole Director of Bondfield Construction Company (1983) Limited passed by the consent of the sole Director on the 5th day of January 1987.

WHEREAS Frank Aquino is the owner of thirty (30) issued and outstanding common shares in the capital of the Corporation;

AND WHEREAS Mario Aquino is the owner of nineteen (19) common shares in the capital of the Corporation;

AND WHEREAS Frank Aquino and Mario Aquino desire to transfer their shares to Aquicon Construction Co. Ltd.

BE IT RESOLVED that the sole Director hereby consents to the transfer of the thirty (30) common shares held by Frank Aquino in the capital of the Corporation and the nineteen (19) common shares held by Mario Aquino in the capital of the Corporation to Aquicon Construction Co. Ltd.

BE IT FURTHER RESOLVED that a new share certificate for forty-nine (49) common shares in the capital stock of the Corporation be issued to Aquicon Construction Co. Ltd. upon its surrendering the aforesaid share certificates assigned to it by Frank Aquino and Mario Aquino.

The foregoing resolution is hereby consented to by the signature of the sole Director of the Corporation.

DATED this 5th day of January, 1987.

"Ralph Aquino"  
RALPH AQUINO

9. As of August 1989 Ralph and Ida were the corporate officers and Ralph the sole Director of Bondfield.

10. On January 30, 1981 Frank received thirty common shares (at \$1.00); Mario received nineteen common shares (at \$1.00) and Ralph retained fifty-one common shares (at \$1.00) of Bondfield Construction Company (1983) Limited.

11. A resolution dated January 5, 1987 signed by the sole Director, Ralph, of 352021 Ontario Limited states:

352021 ONTARIO LIMITED

RESOLUTION of the sole Director of 352021 Ontario Limited passed by the consent of the sole Director on the 5th day of January, 1987.

WHEREAS Aquicon Construction Co. Ltd. is the owner of forty-nine (49) issued and outstanding common shares in the capital of the Corporation;

AND WHEREAS Aquicon Construction Co. Ltd. is desirous of selling its shares in the capital of the Corporation to the Corporation.



BE IT RESOLVED that the Corporation do pay to Aquicon Construction Co. Ltd. the sum of \$105,322.13 and that the Corporation do deliver to Aquicon Construction Co. Ltd. one 1983 GMC pick up truck S/N 1GTCS14B5D0502159 in consideration of the transfer of the aforesaid shares.

BE IT FURTHER RESOLVED that the share certificate of Aquicon Construction Co. Ltd. for forty-nine (49) common shares in the capital of the Corporation be and the same is hereby cancelled.

The foregoing resolution is hereby consented to by the signature of the sole Director of the Corporation.

DATED this 5th day of January, 1987.

"Ralph Aquino"  
RALPH AQUINO

12. Aquicon Construction Co. Ltd. is incorporated November 6, 1986 with Frank and Mario as its Directors and shareholders. Bondfield pays Aquicon \$403,000.00 by cheque dated January 5, 1987 after completion of the transfers of shares in accordance with the agreement dated November 15, 1986. Forty-nine common shares held by Mario and Frank in Bondfield and 352021 were transferred to Aquicon and then redeemed by Bondfield and 352021 Ontario Limited. This price paid by Bondfield to Aquicon included the 1986 Toyota pick-up truck and a 1985 Pontiac Sedan and \$297,677.87 for the redemption of the shares. The price paid by 352021 to Aquicon included one 1983 GMC pick-up truck and \$105,322.13 to redeem the shares. Any assessment by Revenue Canada against Aquicon exceeding \$427,301.57 would be paid by Bondfield/352021 after any appeal Ralph may wish to file. There is also a list of some hand tools and small equipment taken by Frank which are not part of the agreement. (i.e. transit, table saw, levels, generator, chipping hammer, large walker plate). Bondfield trailers were used on Aquicon jobsites.

13. Frank and Mario had some difficulty in obtaining bonding for their new company Aquicon. After having been turned down they were able to obtain the necessary bonding with another insurance company in 1987. When Ralph was contacted by the bonding company for reference he told them that Frank and Mario were capable of running a construction company. In 1988 the bonding company extended new bonding rates stating ... "We believe these new rates represented meaningful reductions from the current rate levels, and are pleased to extend them to Aquicon in recognition of the fine financial results posted to date."

14. From its inception to the present Aquicon has successfully bid and obtained work for contracts starting at three million dollars and up. Aquicon performs the same type of construction work (school construction) for the same clients as Bondfield.

15. The evidence of the three brothers conflicts with respect to Frank and Mario's involvement in running Bondfield. Ralph testified that between 1976 and 1986 Frank did estimating, pricing jobs, and he (Ralph) and Frank would discuss matters and make decisions. According to Ralph, Frank was dealing with the sub-trades, price jobs, negotiate contracts, change work orders with sub-trades. In the absence of Ralph, Frank signed company cheques. Ralph signed the majority of the contracts, Frank signed approximately twenty-five percent. One such contract with the Dufferin-Peel Roman Catholic Separate School Board signed by Frank Aquino dated March 22, 1985 was put in evidence. Ralph estimated that Frank did about twenty-five percent of the estimating.

16. Mario's role with Bondfield from 1980-86 started as a worker, became a Jr. Superintendent then Superintendent. When Bondfield grew Mario became a General Superintendent from

1984 to 1986. Mario performed Superintendent duties including looking after the job, directing the sub-trades, hiring, laying-off. Frank discussed site problems with Ralph. Frank was involved in discussions regarding tendering on jobs, hiring sub-trades and hiring staff for the jobsites.

17. In 1976 Bondfield's office staff included Ralph, Frank and a secretary. In 1980, a second secretary was hired. In 1983 an accountant joined the firm. By 1986 Ralph, Frank, an accountant, a secretary and receptionist/ typist made up the office staff.

18. Ralph decided with his experience and Frank's education Bondfield should be successful. By 1980 the company was successful and Mario joined the company. Ralph and Ida Aquino decided together with Frank to give Mario nineteen percent of the company. Mario had not asked for any shares of the company.

19. In 1986 Frank and Mario told Ralph they were not happy and they were leaving the Company. Ralph indicated he was shocked and had no indication they wanted to leave. Ralph told Frank and Mario to get an accountant and sort out how much money he owed them. After some negotiations it was agreed to pay more than \$400,000.00 including some equipment and vehicles (there was agreement on the items in Tab 11 but not when they were taken). Frank left Bondfield at the end of October. Mario left at the end of November.

20. Prior to Aquicon receiving the pay-out from Bondfield, Ralph gave Frank a personal cheque for \$50,000.00. This was used for personal expenses as well as some initial business expenses for Aquicon. The \$50,000.00 was repaid.

21. In the earlier years Frank spent most of his time on the jobsites. In the later years Frank spent more time in the office helping Ralph. Ralph emphatically disagrees that Frank spent his time almost exclusively on the jobsites between 1976 and 1980. According to Ralph, Frank came into the office Saturday, Sunday, after hours, on rainy days. In 1976 Frank worked ninety percent of his time on the tools. In 1980 approximately ten percent. Both Ralph and Frank did lay-outs and footings between 1976 and 1980. Frank did lay-out for grading, backfilling and site preparation.

### Argument

22. Counsel for the applicants contends on or before January 5, 1987 there was a sale of a business by Bondfield and the numbered company to Aquicon and or the operation of associated or related businesses under common control and direction by Bondfield and Aquicon. Counsel for the applicants reviewed the extensive evidence and exhibits. The company currently known as Bondfield (1983) has been in existence for twenty-one years. The work carried out by Bondfield in the 70's, 80's and 90's has been public and private school construction in the ICI sector. This is an open bidding system. From 1976 to 1986 the company (Bondfield) becomes a major player among the general contractors in school construction in south central Ontario. The three brothers were partners. This was a family operation.

23. Counsel reviewed the evidence with respect to Mario. He joined in 1980. At the time Mario had fifteen years experience in the plumbing industry and five years as a Foreman.

24. Counsel submits until 1986 the three brothers worked together and created a very successful company. The fact that Ralph owned fifty-one percent of the shares in law means Ralph had control but in fact decisions were made together. There were no confrontations before 1986. Frank and Mario became officers and shareholders and eventually became Directors with Ralph at Bondfield (1983) and the numbered company. The company went from a few million dollars in the late 70's to twenty-six million dollars by 1986.

25. Counsel for the applicants points out that Aquicon, whose officers and shareholders are Frank and Mario, is incorporated before the split up of Bondfield and the numbered company. Counsel submits exhibit 7 dated November 15, 1986 is critical. This is the agreement setting out the terms of the separation purported to be signed December 23, 1986. It is the shareholder agreement ending the earlier shareholder agreement.

26. Counsel states Aquicon was incorporated November 6, 1986. The agreement is signed December 23, 1986. Aquicon gets about half a million dollars start-up capital and then sets itself up as a general contractor in the school construction field and enters the very same market as Bondfield. There is no non-competition clause. In Aquicon's first fiscal year of operation they did 8.5 million dollars worth of work. The second year a little over 15 million dollars and the third year more than 21 million dollars. In the first three years of operation, from scratch, Aquicon had contract revenues of 43 million dollars.

27. Counsel submits this was no fluke. The two brothers Frank and Mario had the start-up capital of half a million dollars, vehicles and some small equipment, and their experience and expertise acquired with brother Ralph at Bondfield.

28. Counsel submits that the reason the new company was successful right from the start had something to do with the fact that there was a sale of part of a business from Bondfield to Aquicon or because of a relationship between the companies and their principals. It is not credible to say a couple of superintendents put this successful business together in two or three years.

29. Something tangible flowed from Bondfield to Aquicon, key people, capital. It is Ralph's evidence that it was the collective roles of the three brothers that contributed to Bondfield's success. Ralph and Frank built up the business together. It was Frank who convinced Ralph not to quit in 1976 when times were tough.

30. The Board will have to decide whose evidence is credible with respect to the duties and responsibilities of Frank and Mario. There is the evidence of Ralph on the one hand and Frank and Mario's on the other. If you believe Ralph then there has been a sale of a business or a section 1(4).

31. Counsel submits Ralph's evidence was given convincingly, straight forward. His evidence withstood tough cross-examination and is corroborated by the written records. By comparison Frank's evidence was evasive, he did not recall or remember some things but did remember others.

32. Frank was a key player of Bondfield whether as owner/shareholder or director or officer, he had a day-to-day function in the management or control of Bondfield.

33. Counsel for the applicants, submits the Board's cases in construction consider who does the estimating, bids the jobs, completes the job, who makes the profits, who contributes to the economic well being of the company.

34. Counsel on behalf of Aquicon submits it took seven years for the applicants to decide either the companies were bound under section 1(4) or there had been a sale under section 64. Counsel suggests all of this would have been known by the applicants between 1987 and now - what is the motivation for bringing these applications now? What has motivated these applications is a severe down turn in the economy not a sudden realization that these companies are related or that there has been a sale.



35. Counsel argues that the Board should exercise its discretion and not make a 1(4) declaration given the background and history of these companies. The applicants called no witnesses. They relied on the evidence of Ralph, one of the key persons of Bondfield.
36. Counsel submits that memories would have been more reliable five or six years ago. Much of the evidence is of little significance or irrelevant to the issues to be decided. Aquicon is not denying a transaction took place on January 5, 1987 or that Frank and Mario were at various times shareholders, officers and directors of Bondfield.
37. Counsel for Aquicon submits the Board must look at the labour relations purpose not the commercial transaction.
38. Counsel submits that Frank and Mario did the manual work on site and Ralph did the office work including estimating and pricing until 1980. While Frank spent time in the office on weekends and evenings and rainy days his primary purpose was to work on site. He became somewhat of a general superintendent. He went from site-to-site to get jobs started including preparing footings.
39. Counsel submits Ralph's evidence is that Frank and Mario did not go from site-to-site like he did. Frank and Mario were important people in Bondfield because they were family. They did more than the average superintendent. But the control, drive and enterprising spirit of Bondfield is, was and will always be Ralph and that is one of the characteristics that determines control.
40. Counsel submits Mario rarely went into the office and was never involved in any office decisions. Frank co-ordinated sub-trades on site - that is what a superintendent does. You don't have to be a key man or owner to co-ordinate sub-trades, that is part of the superintendent's function. If there were problems Ralph would handle it because he was in charge. Ralph said he was the "big boss". Counsel submits that is because he makes the final decision.
41. There is quite a difference in the evidence of what took place on closing of bids. Counsel submits the final decision rests with Ralph both practically and legally. Ralph with fifty-one percent of the shares has legal control. Mario was never there for the closing and was not involved in any decision.
42. Counsel submits the only evidence before the Board on closing is that Ralph could not remember which closings Frank was involved in and which ones he did on his own. The only evidence is Frank's. He closed some on his own when Ralph was away. Frank said there were only two and he was in constant touch with Ralph by telephone.
43. Counsel contends Ralph retained control of the company by keeping fifty-one percent. Ralph testified that he wanted to retain control of the company. Frank was a full-time superintendent on the St. David School project in 1983 - how could he have been involved in any meaningful way in the office in bidding, estimating, hiring? Counsel submits there is no evidence that Frank hired anyone. Ralph did all the hiring.
44. What Frank had done was no more or less than any superintendent would do or Ralph had done when he worked as a superintendent for an earlier company. Counsel argues if a superintendent leaves and starts his own business that is not a section 1(4)/64.
45. Counsel for Aquicon submits most of the documents relate to a commercial interest and have no labour relations importance as to whether they were signed November or December or the 1st or 30th. That it is an associated company under the *Income Tax Act* has no bearing on the com-

mon direction and control under the *Labour Relations Act*. It is a commercial benefit to Frank and Mario.

46. Counsel made submissions regarding the name “Aquicon” - Transfer of Goodwill. The schools have an open tender system. There is no negotiations with the School Boards. Anyone who is pre-qualified or has a bond can bid. Your name (See *Gallant Painting*, [1991] OLRB Rep. Sept. 1051) does not get you on the bid list. Aquicon was rejected twice before getting a bond including by Bondfield’s bond company.

47. Counsel submits there was no goodwill in the name. Frank and Mario did not trade on the name. The goodwill and the name Ralph Aquino stayed with Bondfield.

48. Counsel submits the evidence shows only three contracts were signed by Frank. You cannot assume there are others. Two of those contracts were prepared with Ralph’s name because that was the anticipated procedure. Frank signed them because Ralph was away.

49. The equipment and cars in exhibit 11 were not part of the transaction. According to Frank they had no value and Ralph said they were about fifteen thousand dollars.

50. Counsel submits that Ralph, Frank and Mario were not paid the same and that decision rested with the majority shareholder, Ralph.

51. Counsel contends the issue is not who did the bulk of the estimating or take-offs but what was the essence of the business, where did it come from and who provided the enterprising spirit to Bondfield.

52. Frank and Mario subbed the majority of the work when they started Aquicon. They got their price from the sub-contractors. They only did take-offs on work they performed themselves which is the same work they had done in the field as superintendent and labourer for Bondfield.

53. One of the key points is that after Frank and Mario left, Bondfield did not wither away and die. By 1992 Bondfield grew to 100 million dollars. In all the cases cited by the applicants the predecessor company ceases to exist or operate as it had in the past and that is a key issue. There is no erosion of bargaining rights. The essence of the business continues. The enterprising spirit still lives the same as it did when Frank and Mario were still there except to increase four times in volume.

54. Counsel submits the evidence in its totality clearly indicates that Frank and Mario were important to the operation of Bondfield just as any good superintendent who cares about and is good at his job. Ralph said they were both good. The evidence clearly shows that Ralph owned fifty-one percent and controlled Bondfield.

55. Counsel for Aquicon submits no matter what quantum leap one takes, one cannot find there is a sale of a business under all the Board’s criteria. Counsel further submits there are no criteria or indicia present in this case to make a declaration under section 1(4).

56. Counsel for Bondfield submits that the evidence shows the requisite facts for a section 64 or 1(4) have been made out. Counsel submits Bondfield does not oppose the applications before the Board. It is counsel’s position that the evidence of Ralph should be preferred in all instances where it deviates from Frank or Mario and if this evidence is accepted would lead to a finding that the unions are successful on both counts in their applications.

57. Counsel contends the evidence of Ralph should be preferred because of the relative

credibility of the witnesses. The major area where the evidence deviates is the area of control asserted by the three brothers in the running of the Bondfield Companies, both Bondfield and the numbered company and their previous incarnations.

58. Ralph testified he learned estimating from Frank and Bondfield did not hire a full-time estimator until after Frank and Mario left the company.

59. Notwithstanding Frank's evidence of his limited experience with the closing process Frank was successful on his second bid for Aquicon. In his first year of operation Aquicon generated revenue in excess of eight million dollars. Counsel suggests Frank was less than candid when it comes to his experience in these areas. Aquicon does not have an estimator on staff yet they were successful in very short order.

60. The fact that Frank did physical labour on site is not determinative of control and direction a party may have in a particular company. All three brothers performed labour work. The fact that Mario spent eighty to ninety percent on the jobsite makes him no less a director of the company.

61. Regardless of any of the commercial facts (i.e. ownership of shares) the Board should look to Ralph's evidence to determine who the directing minds of the company were, what joined control was exercised by the brothers at all times.

62. Counsel submits there are inconsistencies in Frank and Mario's evidence regarding the salaries paid to the three directors/shareholders and other superintendents. Ralph's evidence should be preferred in this area.

63. The evidence as to why the three brothers broke up 1986 is not clear. Mario testified it was a family problem. Frank testified that Ralph bought a building in 1984 without consulting his partners and that upset Frank and Mario. Ralph said they wanted thirty-three percent each. Ralph testified the purchase of the building was discussed by all three and no one disagreed. Again Frank and Mario are less than candid as to the reason for the break-up.

64. The evidence of Frank and Mario regarding the circumstances surrounding the signing of the documents in 1986 again shows a lack of candor.

65. With respect to Peter Muhjala it is not credible that Frank did not know he worked for Bondfield and did not ask him where he worked previously.

66. Bondfield came in second to Aquicon on a total of one hundred and seventeen million dollars worth of work. Ralph said he could have done those jobs but for Aquicon. Frank testified that Bondfield could not have done the additional work because of bonding limits and supervisory staffing limits. Counsel submits it is a loss of business.

67. Counsel for Bondfield submits the Act contemplates a sale of part of a business. There is no requirement for the predecessor company to go out of business.

68. The parties submitted a joint case book referring to thirty-one Board decisions. Each counsel reviewed the law and the cases supporting their position with respect to these applications.

### **Decision**

69. The Board has reviewed the evidence, all of the cases cited and considered all of the parties' submissions. There are always unique aspects to these cases and this one is unusual in a



number of respects. There has been a six or seven year delay by the applicants in bringing these applications. This may go to the Board's exercise of its discretion under section 1(4) or to damages in the section 126's should the applicants be successful. It is unclear as to what caused the break-up of the brothers. It is interesting to note the absence of a non-competition clause in the agreement to pay Aquicon for the Bondfield shares. It is reasonable to assume if partners or directors leave a company the remaining partner(s) would want to minimize the risk of the departing group setting itself up in the same business competing against their former partner(s).

70. The commercial transactions that took place are set out in the partial agreed statement of facts and supported by exhibits filed with the Board. Bondfield and the numbered company are bound to the applicants' agreements in the ICI sector.
71. Frank, after graduating as a civil engineer, joined Bondfield in 1976. Bondfield between 1976 and 1986 grew into a successful general contractor in the school construction field. In 1980 Mario joined Bondfield. He had approximately fifteen years experience as a plumber for a well known plumbing contractor. This included a number of years as a Foreman.
72. It is not disputed that Frank and Mario worked as superintendents on Bondfield jobs. All three brothers worked at the tools to various degrees with Ralph the least amount of hands on work. As of 1980 all three brothers were shareholders, officers and directors of Bondfield with Ralph being the majority shareholder at fifty-one percent.
73. Aquicon was successful in obtaining work right from the start. Aquicon is operating in the same school construction market as Bondfield.
74. The evidence of the three brothers differs considerable with respect to Frank and Mario's participation in Bondfield. There is conflicting evidence as to who exercised the control and direction of the enterprise. Frank and Mario's evidence suggests they were no more than superintendents with Ralph calling all the shots. Ralph's evidence is that he, Frank and Mario ran the company and made decisions together.
75. The Act contemplates the sale of "part of a business" and defines "sell" including leasing, transfers and *any other manner of disposition*. [emphasis added]
76. Ralph "gave" his brothers forty-nine percent of his business and made them shareholders and directors. When the three brothers appear to have a falling out Ralph agrees to pay out over four hundred thousand dollars. Frank and Mario resign as directors of Bondfield and start up Aquicon.
77. Without this substantial start-up capital Aquicon would have had a much tougher time to get started. Its instant success can, in part, explained by the availability of this start-up capital. Noticeably absent is a non-competition clause which enabled Aquicon to compete with Bondfield for the same jobs in the same market, namely school construction.
78. It is not credible to suggest two superintendents without substantial experience in estimating, bidding, subcontracting etc. in the school construction business could start-up as a general contractor in that field and be successful in the first year.
79. One can speculate how much of the work picked up by Aquicon would have gone to Bondfield but it is reasonable to assume that Bondfield would have had a better chance at obtaining some of that work but for Aquicon.

80. When a company loses two of its directors, who own forty-nine percent of the business, and then pays out over four hundred thousand dollars to redeem their shares, there is a definite loss to the enterprise.

81. The Board looks at the loss of bargaining rights as well as the potential loss of bargaining rights. In this case two of the three directors who also worked in the field left Bondfield. Bondfield redeemed the shares, originally given to Frank and Mario, at a fair price determined by an accountant in consultation with Frank and Mario. The expertise acquired while being part owners of Bondfield together with the start-up capital enabled Frank and Mario to start a very successful construction company doing the exact same work as Bondfield but as a non-union contractor.

82. Having regard to the above we find there has been a disposition of part of Bondfield's business to Aquicon and it constitutes a sale of a business from Bondfield to Aquicon within the meaning of section 64 of the Act. The Board further declares as a result of such sale Aquicon is bound to the applicants' ICI agreements.

83. In view of the finding that a sale has taken place and Aquicon is bound to the four agreements we see no necessity to resolve the conflicting evidence of the three brothers as it relates to the section 1(4) application. That part of the application is dismissed.

84. The parties are directed to meet with a Labour Relations Officer to attempt to resolve the section 126 applications filed with the Board.

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**2463-94-G International Association of Heat and Frost Insulators and Asbestos Workers, Local 95, Applicant v. B & D Insulation Inc., Responding Party**

**Construction Industry - Construction Industry Grievance - Board finding and declaring that employer discriminated against union steward and violated collective agreement by failing to offer him opportunity to work overtime on specified date - Grievance allowed**

**BEFORE:** *Louisa M. Davie*, Vice-Chair, and Board Members *W. N. Fraser* and *G. McMenemy*.

**APPEARANCES:** *Bernard Fishbein*, *Joe de Wit* and *Jim Bourne* for the applicant; *Bruce Binning*, *John Beernink*, *Jim Beernink* and *Peter Woloszanskys* for the responding party.

**DECISION OF THE BOARD;** December 1, 1994

1. This referral of a grievance pursuant to section 126 of the Act was heard by the Board on November 23, 1994. For ease of reference the applicant will be referred to as "the union" and the responding party will be referred to as "the employer" throughout the remainder of this decision.

2. The union asserts that the employer has violated Article 2.02 of the collective agreement between the Master Insulators' Association of Ontario Inc. and the International Association of Heat and Frost Insulators and Asbestos Workers, and the International Association of Heat and Frost Insulators and Asbestos Workers, Local 95 ("the collective agreement") to which the employer is bound. That Article states:

The Union agrees to give preference to and furnish the most competent available employees to the employers on request, provided however, that the employer shall have the right to determine the competence and qualifications of its employees, and to discharge or refuse to employ, in his or her sole discretion, and employee for any just and sufficient cause. *The employer shall not discriminate against any employee by reason of his or her membership in the Union or his or her participation in its lawful activities.*

(emphasis added)

3. It is the union's position that the employer discriminated against Mr. Dan Labelle when, on the weekend of September 24 and 25, 1994, it did not offer Mr. Labelle the opportunity to work overtime. The union asserts that on that weekend all other employees of the employer were either offered overtime work or actually performed overtime work. Mr. Labelle was the only employee who did not work any overtime that weekend or who was not offered the opportunity to work overtime. The union asserts that this discriminatory conduct was undertaken by the employer *because* Mr. Labelle had previously participated in the union's lawful activities by filing a grievance alleging that he had been improperly laid-off. That grievance had been settled by the parties on September 13, 1994. Mr. Labelle was re-employed by the employer on September 21, 1994 in accordance with the terms of the minutes of settlement. Although the trade union does not assert that the employer has violated the minutes of settlement, the trade union does assert that the employer's failure to provide Mr. Labelle with the opportunity to work overtime was prompted and motivated by the fact that he had filed the earlier grievance.

4. The employer disputes the union's allegations and submits that the earlier grievance was a grievance filed by the union and not Mr. Labelle in which the union alleged that Mr. Labelle was a union steward and had therefore been improperly laid-off. That grievance was therefore not "participation" by Mr. Labelle "in [the union's] lawful activities" so that there could not be discriminatory conduct by the employer against Mr. Labelle by reason of the filing of that grievance. The employer noted also that the minutes of settlement *did not* indicate that the employer had violated the collective agreement, *did* suggest an admission of incorrect conduct in the process of the naming of a union steward on the part of the trade union, and simply provided that the employer would offer Mr. Labelle the next employment opportunity it had as a benefit to Mr. Labelle and without any admission of wrongdoing. Having voluntarily given that benefit to Mr. Labelle the employer had no reason to "discriminate" against him when he was again employed.

5. The employer's witness, J. Beernink also testified about the method and rationale he applied in selecting employees to meet the employer's overtime requirements for the September 24 and 25 weekend. In so doing Mr. Beernink indicated that he was motivated by the requirements of the job, the skill and ability of the employees and the seniority of the employees. It was his testimony that he was *not* motivated or influenced by the earlier grievance or the settlement of that grievance.

6. The relevant and in large part undisputed evidence in this matter can be briefly summarized as follows. On September 23rd, Mr. Beernink determined that the employer needed 30 persons to perform overtime work at its "Nova shutdown" project. The employer had 19 persons working at that site and decided that those employees would remain at that site to perform the overtime work. It therefore offered the opportunity to work overtime to those people on site first. Four of these persons had been called from the union hall and had commenced work at that site on September 22nd and thus had less seniority than Mr. Labelle.

7. In addition to the employees working at the Nova shutdown project, the employer had a number of other employees working at other sites. The employer decided to offer overtime work to other employees working at these other locations.



8. Mr. Labelle was working at the employer's Imperial Oil project. There were five persons working at that site. By the time Mr. Beernink spoke to John Pavli, the foreman at that site, he needed only three more persons to work overtime to meet the thirty (30) person workforce he had determined was necessary to meet the requirement of the client/owner (Nova). Mr. Beernink instructed Mr. Pavli to offer overtime work to Tom Klompster, Dave Pavli and Dave Thoms. In addition Mr. John Pavli was himself given the opportunity to work overtime. Thus, although the employer required only three more persons to work overtime, it offered the overtime opportunity to four of its employees at that site. Mr. Beernink testified that if all four persons had accepted the overtime opportunity, he would have had to decide which three of the four persons would actually work the overtime. In the result, of the five persons on the Imperial Oil site only four were provided with the opportunity to work overtime. Mr. Labelle was not provided with that opportunity because he was the last person to have started work on that site. As it happened Mr. Thoms indicated that he did not want to work overtime that weekend so that it became unnecessary for Mr. Beernink to "cut" one of the four persons to whom overtime work was offered.

9. The only other of the employer's employees who was *not* offered the opportunity to work overtime that weekend was Mr. Fred Muscat. Mr. Muscat was working at the employer's Amoco project. Mr. Muscat is one of the employer's long service employees. The Amoco project is one of the employer's maintenance contracts. Mr. Muscat is regularly assigned to work at Amoco and has worked on behalf of the employer (or its predecessor) at the Amoco site for the past twelve years. That appears to be his primary job on behalf of the employer although Mr. Muscat is not employed exclusively at that site. As a result of his regular presence at that site, and the nature of the work performed by Mr. Muscat, it is not unusual for the owner/client Amoco to request Mr. Muscat to perform work at specific times, or to tell him that his work is "caught up" and he need not return for a period of time. Similarly, it is not unusual for Amoco to request Mr. Muscat to work overtime directly and without the prior knowledge or approval of the employer. That is what happened on September 24th when Amoco called Mr. Muscat and requested him to work overtime. Unbeknownst to the employer until Tuesday September 27th, Mr. Muscat worked six (6) hours of overtime on Saturday September 24th at the Amoco site.

10. In the result the evidence indicates that all employees except Mr. Labelle and Mr. Muscat were given the opportunity to work weekend overtime by the employer. Although not offered overtime work by the employer, Mr. Muscat nevertheless ended up working overtime. Thus, the only person who was not offered overtime *or* who did not work overtime that weekend was Mr. Labelle.

11. To complete the evidentiary picture we note that not all of the persons who had indicated they would work the overtime showed up to perform the overtime work. As a result, on Saturday September 24, there were only 28 persons working overtime at the Nova shutdown project. Initially the employer had not anticipated overtime work for Sunday September 25th. However, on Saturday the employees were offered further overtime work for the Sunday and in fact 27 persons worked overtime at the Nova shutdown project on that day. An emergency call from another customer caused two persons (John and Dave Pavli) to work overtime at another site.

### Decision

12. In a grievance of this nature the onus to prove that there has been a violation of the collective agreement rests with the party which asserts a violation. Unlike for example an unfair labour practice complaint under the *Labour Relations Act*, there is no reverse onus so that the maxim "he who asserts must prove" continues to express the legal burden of proof.

13. The assertion in this grievance however concerns an allegation that the employer's con-

duct was discriminatory *because of* Mr. Labelle's participation in lawful union activities. In contested grievances of this nature one would not normally expect an employer to openly admit that it violated the collective agreement by discriminating against an employee because that employee participated in lawful union activities. The legal onus or burden of proof is therefore not generally met with the presentation of direct evidence, but of necessity results in the presentation of circumstantial evidence from which inferences must be drawn. An employer does not normally incriminate himself, and yet the real reason for the employer's actions lie within the employer's knowledge. Thus, where the union leads evidence of the employer's actions and establishes circumstances which appear to result in discriminatory conduct, an evidentiary onus shifts to the employer to provide an explanation for those actions or that conduct to refute the determination which might otherwise be made (based on inferential reasoning) that the discriminatory conduct was motivated by the employer's response to the employee's participation in lawful union activity. These legal and evidentiary burdens of proof therefore require this Board of arbitration to look at *all* of the circumstances to determine whether or not the employer's conduct was "discriminatory" and was undertaken "by reason of" Mr. Labelle's participation in lawful union activities.

14. We start with the proposition that the evidence does establish sufficient circumstances which point to discriminatory conduct (we hasten to add that "discriminate" in this sense refers to differential treatment rather than any human rights sense of the word). While all other employees were either offered the opportunity to work overtime or did in fact work overtime, *only* Mr. Labelle did not have that opportunity. Similarly, we accept that filing, pursuing and settling grievances constitutes "participation in the [trade union's] lawful activities" (by way of analogy see *Ontario Nurses Association*, [1982] OLRB Rep. Oct. 1546 where giving testimony at an arbitration hearing was found to be protected activity under what is now section 82 of the *Labour Relations Act*). Thus, in the absence of an explanation from the employer, this board of arbitration *could* by inferential reasoning conclude that the reason Mr. Labelle was treated differently (or "discriminated against") was because he had recently been responsible for the filing of a grievance against the employer.

15. We turn then to an examination of the surrounding circumstances and the employer's explanation. We do so in the context of Article 17.01 of the collective agreement entitled "management rights" which provides, *inter alia*, that the employer has the "exclusive right to manage the business" including the right "to determine qualifications, transfer... increase and decrease working forces" and "to determine... scheduling of work". We do so also in the context of the norms of the construction industry where employment relationships are often transitory, where work opportunities and an employer's workforces are necessarily fluid, and where the non-construction or industrial union concepts of "seniority" have a different significance or importance.

16. In that context we find that the employer's explanation that overtime work was *first* offered to the employees already on site to be reasonable even though the effect of that determination meant that employees with less "seniority" than Mr. Labelle (having come to the Nova site on September 22) worked overtime while he did not. That type of determination is not unusual in the construction industry when employers may have various projects on the go at the same time with different crews at each project. The decision to offer overtime work to the Nova site employees in preference to Mr. Labelle therefore does not point to discriminatory conduct by reason of Mr. Labelle's union activity when viewed in the context of the employer's explanation. That explanation is consistent with industry practice and the collective agreement provisions including the management rights article.

17. Similarly, the employers apparent decision to offer overtime work to employees working in crews at other projects in preference to offering that opportunity to Mr. Labelle or the other



employees with whom he was working at the Imperial Oil site does not point to a violation of the collective agreement. The employer's determination to offer overtime to all employees working at a particular site before extending that offer to employees at another site, or in place of offering overtime on a more piece meal basis to various employees working at different sites is not unusual in the construction industry, and is consistent with the management's rights provisions of the collective agreement. In the construction industry where the traditional concepts of "seniority" are rarely found in collective agreements (and is not found in this collective agreement) because of the importance attached to an employee's "seniority" in the hiring hall and his/her placement on the hiring hall dispatch list, it is not unusual for an employer to transfer its entire complement of employees from one site to work overtime at another site rather than selecting a few employees from one project and then a few more from another project to do that overtime work.

18. We do not however understand and do not accept as reasonable the employers explanation why only four of the five employees in the Imperial Oil crew were offered overtime work while Mr. Labelle was not. The employer's explanation that Mr. Labelle was the least senior employee in that crew is reasonable and makes sense *only if* the employer had actually required four more persons to work overtime. By the employer's own admission however, by the time the Imperial Oil crew was offered overtime work, the need for employees to work overtime was only 3 so that if all 4 employees had accepted overtime work, the employer would have had to eliminate at least 1 employee from the overtime work opportunity. The employer offered no explanation why 4 persons were offered overtime when only 3 were required, or why, if it was going to offer overtime to more employees than it actually required it did not also extend that opportunity to Mr. Labelle.

19. In this case, where the employer's specific and conscious decision (the evidence disclosing that Mr. Beernink specifically named the four employees when he told the foreman to offer overtime work) *not* to offer an overtime opportunity to Mr. Labelle is made in the shadow of Mr. Labelle's recent grievance, and Mr. Labelle's reinstatement 3 days earlier in accordance with the settlement of that grievance, a reasonable inference to be drawn is that Mr. Labelle was not offered the opportunity to work overtime because of his past participation in the union's lawful activities. Moreover, these circumstances tend to "taint" what we would otherwise have concluded was a plausible and reasonable explanation why Mr. Labelle was not offered the opportunity to work overtime.

20. Having examined all of the facts and circumstances we have therefore concluded that the employer did violate Article 2.02 of the collective agreement when it did not on September 23rd offer the opportunity to work overtime to Mr. Labelle insofar as the employer did "discriminate against [Mr. Labelle] by reasons of his... participation in [the union's] lawful activities". We so declare.

21. The remaining issue is what, if any remedy flows from the employer's violation of the collective agreement. That issue has been troublesome. There was little evidence led which was applicable to that issue and the evidence before the Board from which it can fashion an appropriate remedy (aside from the declaratory relief) is at best sketchy. Thus for example we have no evidence that Mr. Labelle would have accepted the offer to work overtime on either Saturday or Sunday. We have some evidence from which we could conclude that *if* Mr. Labelle had accepted, the employer would nevertheless have been forced to "cut" him (or some other employee) as it intended to do if Mr. Thoms had accepted the overtime work. Similarly, there is insufficient evidence to indicate that even if he had worked overtime on Saturday, Mr. Labelle would have been offered or would have worked overtime on Sunday. The evidence *does* establish that *all* of the overtime work required to be done on that weekend was performed without any difficulty with an



employee complement that was *less* than the 30 employees projected by the employer as necessary at the commencement of the weekend. That evidence, together with a lack of other evidence, suggests that a claim for 16 hours overtime pay *may* be speculative and may not accurately reflect the actual damages flowing from the violation. In the circumstances the Board makes no order with respect to any monetary damages but will remain seized of that issue in the event the parties are unable to agree upon the matter.

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**1963-94-U; 1975-94-R** International Brotherhood of Painters and Allied Trades, Local Union 1891, Applicant v. **Domus Industries Ltd.**, Responding Party

**Certification - Certification Where Act Contravened - Construction Industry - Interference in Trade Unions - Board finding lay-off of nine employees tainted by anti-union animus - Union certified under section 9.2 of the Act**

**BEFORE:** *Lee Shouldice*, Vice-Chair, and Board Members *W. N. Fraser* and *J. Redshaw*.

**APPEARANCES:** *Craig Flood* and *Len R. Anderson* for the applicant; *Brett Christen*, *Mario Ianucci* and *Adrian Ianucci* for the responding party.

**DECISION OF THE BOARD;** December 16, 1994

## **I. Introduction**

1. Board File 1975-94-R is an application for certification in the construction industry. Board File 1963-94-R is an application under section 91 of the *Labour Relations Act* in which the responding party is alleged to have committed a number of unfair labour practices, and in which the applicant asks the Board to apply section 9.2 of the Act to automatically certify the applicant as the bargaining representative of certain of the responding party's employees. The hearing of this matter was expedited pursuant to section 92.2 of the Act.

2. By way of decision dated October 4, 1994, the Board made the following declarations, directions, and orders:

- (1) the Board declares that Domus Industries Ltd. has contravened sections 65, 67 and 71 of the *Labour Relations Act*;
- (2) the Board orders that Domus Industries Ltd. cease and desist from contravening sections 65, 67 and 71 of the *Labour Relations Act*;

- (3) the Board orders that the responding party compensate:

Tomas Veloso  
Sergio Anza  
Remberto Sandoval  
Oscar Palacios  
Carlos Segarra  
Ramiro Alvarado  
Davy Anania  
Jose Nuela  
Ricardo Matos

for all losses of income and benefits as a result of their layoff from employment on September 1, 1994, including interest as calculated in the usual manner;

- (4) the Board directs that Domus Industries Ltd. provide each of the individuals on Schedule "A" to its Response in Board File 1975-94-R with a copy of this decision and a copy of the Notice to Employees attached as Appendix "A" hereto;
- (5) the Board directs that representatives of the applicant be allowed to convene a meeting of employees in the bargaining unit, in the absence of members of management, for a period of not more than two hours, on company premises during normal working hours;
- (6) the Board certifies the applicant, pursuant to sections 9.2 and 146(1) of the *Labour Relations Act*, for the following bargaining unit:

all journeymen and apprentice painters, employees engaged in the laying of resilient tiles, ceramic tiles, hardwood tiles, sheet goods, linoleum or carpets, or drywall tapers, plasterers or fireproofing applicators in the employ of the responding party in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all journeymen and apprentice painters, employees engaged in the laying of resilient tiles, ceramic tiles, hardwood tiles, sheet goods, linoleum or carpets, or drywall tapers, plasterers or fireproofing applicators in the employ of the responding party in all other sectors in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham save and except non-working foremen and persons above the rank of non-working foreman.

For the purposes of clarity, the Board declares that asbestos removers are included in the bargaining unit.

These are the reasons for the above declarations, directions and orders.

## **II. Facts**

3. The responding party, Domus Industries Ltd. (hereinafter "Domus" or "the employer"), is engaged in the business of providing environmental services to businesses, residential properties, and institutions throughout Ontario. At the time relevant to the present application, Domus was engaged to perform asbestos removal at the Queen Street Mental Health Centre, 1001 Queen Street West, Toronto, Ontario.

4. On September 1, 1994, the applicant (hereinafter "the union") commenced an organizing campaign to represent certain employees of Domus. Mr. Len Anderson, a Business Representative of the applicant, visited the Queen Street Mental Health Centre site at approximately 12:00 noon on September 1, 1994, in order to sign employees of Domus at the site to memberships in the

union. Mr. Anderson testified as to what occurred on that day. We found Mr. Anderson to be a credible witness.

5. Mr. Anderson, upon arriving at the site, recognized Mr. Sergio Anza, who had previously been a member of the union. Although Mr. Anderson recognized Mr. Anza, at that time he could not put a name to Mr. Anza's face. Mr. Anderson approached Mr. Anza, struck up a conversation with him, and explained to him that by signing a card he could obtain the immediate benefits of unionization should the union be able to sign up 55% of the employer's employees in a bargaining unit. At that point, Mr. Anza, within sight of a number of other employees on their lunch break, signed a membership card. Mr. Anza did not tell any other Domus employee to sign a membership card, nor did he tell anyone that Domus wanted him to sign a membership card. Subsequently, Mr. Anderson signed up a number of the employees on their lunch break who could have seen Mr. Anza signing a membership card.

6. This course of events is significant because it was the submission of counsel for Domus that Mr. Anza was a foreman, and that the membership cards obtained by Mr. Anderson were tainted by the fact that Mr. Anderson initially signed a manager to union membership at the outset of the organizing campaign. During the course of the hearing we heard testimony regarding Mr. Anza's duties and responsibilities with Domus. We confirm our oral ruling at the hearing that Mr. Anza is a working foreman rather than a foreman for Domus. Although Mr. Anza clearly exercised some supervisory responsibilities and had previously hired acquaintances for Domus when necessary, we are of the view that the evidence, taken in its totality, establishes that Mr. Anza could be said to be, at best, a working foreman. We are also of the view that employees of Domus would perceive Mr. Anza to be a working foreman rather than a foreman. It should be noted that Mr. Mario Ianucci, the General Manager of Domus, testified to Mr. Anza's position with the employer and, after acknowledging that he was familiar with and understood the concept of a "working foreman", confirmed that, in his view, Mr. Anza *was* one. On the evidence before us, we conclude that Mr. Anza is a working foreman for Domus. We are also of the view that the membership cards obtained by the applicant were not tainted in any way by the fact that Mr. Anza was the first employee to sign a card.

7. Mr. Anza testified that he did not realize that he was signing a union membership card at the time Mr. Anderson approached him. Mr. Anza told the Board that Mr. Anderson advised him that by signing the card he was authorizing Mr. Anderson to check into whether he was still eligible for benefits as a union member. We specifically reject that evidence. It is unquestioned that, eighteen months earlier, Mr. Anza had executed a membership card in identical form on behalf of the same applicant. For Mr. Anza (who stated that he has since that time upgraded his English skills and who confirmed to the Board that he can read English) to state that he did not understand the import of words on the membership card or the thrust of Mr. Anderson's comments to him is not credible. In our view, the words on the face of the membership card are clear, as were Mr. Anderson's comments, and Mr. Anza knew exactly what it was that he was signing.

8. Mr. Anderson proceeded to sign a number of Domus employees outside of the Queen Street Mental Health Centre using his own limited Spanish speaking skills, and then proceeded into the Centre to speak to other Domus employees in the presence of one Mr. Oscar Palacios. Mr. Palacios acted as an interpreter for Mr. Anderson. We note here that the asbestos removal work being performed by Domus at the Centre was restricted to a crawl space underneath the building. While in the building Mr. Anderson, in the presence of Mr. Palacios, signed up further employees to union membership. Soon after signing these individuals, and just before Mr. Anderson departed, the employer's foreman at the site, Herman Cafua, appeared and spoke to Mr. Anderson. There is no dispute that Mr. Cafua exercises managerial functions for Domus. Mr.



Anderson stated that he asked Mr. Cafua to sign a membership card “for the hell of it” and was turned down. A brief discussion occurred at which time Mr. Anderson noted another employee of Domus walking by. Mr. Anderson told Mr. Cafua that he was going to try to sign this individual to a membership in the union, and asked Mr. Cafua whether he thought the employee would sign. Mr. Cafua responded in the negative. Mr. Anderson left the discussion to solicit the worker. Shortly thereafter, Mr. Anderson left the site and went directly back to his office in Thornhill. Mr. Anderson left the site just prior to 1:00 p.m.. At some point shortly after Mr. Anderson left the site, Mr. Cafua was advised by the employees that a number had signed membership cards in support of the union. Mr. Anza stated that Mr. Cafua asked him specifically whether he had signed a card.

9. Upon his return to the office, Mr. Anderson found two phone messages waiting for him, both from employees of Domus. The messages (which were taken by the receptionist and/or a secretary) suggested that the two employees no longer wished to be members of the union. Mr. Anderson spoke to one of the two individuals, Mr. Veloso, who confirmed that he no longer wished to remain in the union, and did not want his card to count towards any application for certification. Mr. Anderson abided by Mr. Veloso’s request. Later that afternoon, the remainder of the membership evidence that Mr. Anderson had collected was forwarded to the Board in support of an application for certification filed at the same time.

10. There followed a number of telephone calls to Mr. Anderson’s office on September 1, 1994, and on September 2, 1994. These will be discussed below. The apparent cause of these calls was a temporary layoff from employment which occurred at approximately 1:00 p.m. on September 1, 1994, mere minutes after Mr. Anderson had departed from the Queen Street site. The testimony before the Board established that Matthew Meek, the Site Supervisor Co-ordinator of the general contractor on site, had arrived at the site after Mr. Anderson had departed. A number of the Domus employees were inside the Queen Street Mental Health Centre, milling around and talking. Given the nature of the workplace, Mr. Meek felt it appropriate that these employees not mill around inside the Centre. He approached Mr. Cafua and told him to “take these problems outside”. He did not wait for Mr. Cafua to answer him. Mr. Meek testified that he was quite satisfied to have these individuals return to work, but did not want the worker’s congregating inside the Centre. In any event, Mr. Cafua then approached Mr. Anza and directed Mr. Anza to tell all of the employees to go home, and to come back to work the next morning. Mr. Anza complied with this direction, which occurred after Mr. Cafua had become aware of who had signed union membership cards. According to Mr. Anza, Mr. Cafua also explained the layoff on the basis that “it was late”. The employees on the site were eventually paid to 1:00 p.m. rather than to 4:00 p.m., their normal departure time. It was immediately after this layoff that Mr. Anderson began receiving telephone calls. The employees did, in fact, go back to work the next morning.

11. Mr. Christen, during argument, submitted that the evidence supported the conclusion that Mr. Meek had told Mr. Cafua to send the employees home that day. The evidence just does not establish that fact. Mr. Meek testified that he told Mr. Cafua to “take these problems outside”, nothing more, nothing less. It is, in our view, an unreasonable and improbable leap from that request by Mr. Meek to the conclusion that Mr. Meek told Mr. Cafua to lay off all of the employees for the afternoon of September 1, 1994. We note here that Mr. Cafua did not testify in these proceedings notwithstanding that he was the central figure to the events which unfolded. Given the absence of any evidence to the effect that Mr. Cafua was ordered or believed that he had been ordered to send these people home from work, we can only conclude that Mr. Cafua decided on his own accord to send the workers home that afternoon.

13. As noted above, telephone calls began flooding into the applicant’s office shortly after

the layoff at 1:00 p.m. on September 1, 1994. On September 1, 1994, Mr. Anderson received messages from Mr. Veloso and one Mr. Matos prior to filing the application for certification. Later that day Mr. Anza called Mr. Anderson and left a message which indicated that he no longer wished to be a member of the union.

14. On September 2, 1994, Mr. Anderson spoke to a number of employees of Domus. At approximately 7:20 a.m. he received a call from Jose Nuela. Mr. Nuela asked Mr. Anderson to "cancel" his card. Mr. Anderson described Mr. Nuela's state as being one of agitation. Mr. Nuela was told that the application had been filed with the Board and that it was too late to "cancel" his membership card. After that call, Mr. Anza called and asked Mr. Anderson to "pull" his card. Mr. Anderson testified that Mr. Anza stated that he believed he would be fired if the card was not cancelled. Mr. Anza denied making such a statement but we find the testimony of Mr. Anderson to be more credible and reject Mr. Anza's testimony. Mr. Anderson told the Board that Mr. Anza sounded anxious. Again, Mr. Anderson told Mr. Anza it was too late to withdraw his card because the application had been filed with the Board.

15. Shortly after 8:00 a.m., Mr. Matos called Mr. Anderson. Mr. Anderson said he was distraught and that he said he had been laid off. He wanted his card back from Mr. Anderson. Mr. Anderson told him that his card had already been filed with the Board. At approximately 8:20 a.m., Mr. Palacios called Mr. Anderson and asked that his card be ripped up. Mr. Anderson described Mr. Palacios' tone as being anxious. It is notable that these two telephone calls occurred on working time.

16. Approximately five minutes later, at 8:25 a.m., Mr. Cafua called Mr. Anderson. According to Mr. Anderson, Mr. Cafua told him firmly that "his boys did not want to be in the union". Mr. Anderson told the Board that he referred Mr. Cafua's call to Mr. Armando Colafrancheschi, the union's president, who spoke to Mr. Cafua. Mr. Colafrancheschi told Mr. Cafua that there was nothing that could be done, as the cards had gone to the Board.

17. The next event of significance occurred on Monday, September 12, 1994. On that morning, Mr. Anza and Mr. Cafua attended at the office of Mr. Anderson. They provided to Mr. Anderson a petition document which stated as follows:

We the men listed below wish not to be part of the union 1891. We called Mr. Anderson Sept. 1st and 2nd 1994 and told him we wish not to be part of the union. He said he would rip-up our member cards.

September-9-1994

This petition had appended to it the signatures of 8 employees of Domus. Mr. Cafua had viewed all of the signatures on the way to the union's offices and did most of the talking to Mr. Anderson. Mr. Cafua told Mr. Anderson that, after Mr. Anderson had left the site on September 1, 1994, one worker, a Mr. Carlos Segarra, questioned why there were so many long faces. He was told that a number of employees had signed union cards and now did not know what to do. Mr. Cafua told Mr. Anderson that Mr. Segarra had, then, recounted to employees a number of bad experiences he had encountered with the union and told employees that the only way to get out of the union was to write a letter and state that they wanted out of the union. Mr. Segarra was identified to Mr. Anderson as the petitioner's author. However, it was conceded by Mr. Anza during testimony that he was, in fact, the author of this document. Mr. Anza stated that he did not correct Mr. Cafua's assertion of authorship to Mr. Anderson because he did not want to "interrupt" Mr. Cafua. When asked in cross-examination by opposing counsel whether Mr. Cafua knew about the origination of the document, Mr. Anza told the Board that he didn't, but then stated that "we decided it [the petition] would be a good idea. Or the guys". It is apparent to us that Mr. Cafua was well aware of



the creation and circulation of the petition document offered to Mr. Anderson at the time that it was prepared and signed by the eight employees.

### **III. Issues**

18. It is on the basis of the evidence above that the various legal issues identified below were argued by counsel. The pertinent issues, when reduced to their core, centre around the validity of any membership evidence signed by the applicant because of Mr. Anza's signing of a membership card and the unfair labour practices which occurred in the circumstances. The former issue is dealt with above in paragraph 6. In relation to the latter issue is the application of section 9.2 of the Act in the circumstances of this case. We propose to deal with the issue of the unfair labour practices and the application of section 9.2 of the Act at the outset.

### **IV. Unfair Labour Practices**

19. The union alleges that the employer has violated sections 65, 67 and 71 of the Act. These provisions provide as follows:

**65.** No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of the employer's freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence.

**67.** No employer, employers' organization or person acting on behalf of an employer or an employers' organization,

- (a) shall refuse to employ or to continue to employ a person, or discriminate against a person in regard to employment or any term or condition of employment because the person was or is a member of a trade union or was or is exercising any other rights under this Act;
- (b) shall impose any condition in a contract of employment or propose the imposition of any condition in a contract of employment that seeks to restrain an employee or a person seeking employment from becoming a member of a trade union or exercising any other rights under this Act; or
- (c) shall seek by threat of dismissal, or by any other kind of threat, or by the imposition of a pecuniary or other penalty, or by any other means to compel an employee to become or refrain from becoming or to continue to be or to cease to be a member or officer or representative of a trade union or to cease to exercise any other rights under this Act.

**71.** No person, trade union or employers' organization shall seek by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of a trade union or of an employers' organization or to refrain from exercising any other rights under this Act or from performing any obligations under this Act.

Also of significance is section 91(5) of the Act which provides as follows:

**91 (5)** On an inquiry by the Board into a complaint under subsection (4) that a person has been refused employment, discharged, discriminated against, threatened, coerced, intimidated or otherwise dealt with contrary to this Act as to the person's employment, opportunity for employment or conditions of employment, the burden of proof that any employer or employers' organization did not act contrary to this Act lies upon the employer or employers' organization.

20. The principles applied by the Board to cases of the nature before us are well estab-



lished. Section 91(5) of the Act places the burden of proof on the responding party to establish on the balance of probabilities that it did not act contrary to the Act. The effect of the reverse onus of proof was discussed by the Board in *Barrie Examiner* [1975] OLRB Rep. Oct. 745:

“... the effect of the reversal of the onus of proof is to require the employer to establish two fundamental facts. First, that the reasons given for the discharge are the only reasons and, second, that these reasons are not tainted by any anti-union motive. Both elements must be established on the balance of probabilities in order for the employer to establish that no violation of the Act has occurred”.

The reverse onus provisions of the Act apply to layoffs which are alleged to be violations of the Act (see, for example, *Tillotson-Sekisui Plastics Limited* [1979] OLRB Rep. Oct. 1027; *B & S Furniture Manufacturing Limited* [1980] OLRB Rep. May 645, and, more recently, *Barton Feeders Inc.* [1993] OLRB Rep. Feb. 89).

21. As noted above, Mr. Cafua did not testify on behalf of the employer. In a proceeding such as this one, where Mr. Cafua is integrally involved in the events which are alleged to constitute the unfair labour practices committed by the employer, one would expect that Mr. Cafua would be called as a witness to explain the circumstances surrounding the events which occurred. Should such evidence not be offered by the employer, the Board is entitled to and typically will, in almost all cases, draw the inference that the evidence would not have been favourable to the employer's case, or at least that it would not have supported it (see, for example, *B & S Furniture Manufacturing Limited*, *supra*, at paragraph 11). Mr. Cafua is still employed by Domus in a managerial capacity. There was no suggestion made here that Mr. Cafua was in any way prevented from testifying for reasons beyond the control of the employer. In these circumstances, we can only assume that the evidence given by Mr. Anderson as it relates to Mr. Cafua's statements and conduct reflects what in fact occurred.

22. Having regard to all of the evidence before us, we are of the view that the employer committed numerous unfair labour practices contrary to the *Labour Relations Act*. These breaches of the Act were entirely the result of the conduct of Mr. Cafua, who, as a foreman and, therefore, as a member of management of the employer, acts on behalf of Domus. Domus is responsible for the conduct of Mr. Cafua.

23. The most significant violation of the Act by Mr. Cafua is the layoff of nine employees for the duration of the afternoon of September 1, 1994. The employer put forth no credible explanation for the layoff. Mr. Ianucci in his evidence conceded that there was no lack of work at the site. It is well established that if *any* reason for the layoff were to be related to the exercise by one or more employees of his or her rights under the Act, the layoff would be in violation of the Act. In light of the absence of any evidence explaining the reason for the layoff, we conclude that the employer has not satisfied the Board that the layoff was devoid of anti-union animus. In fact, we can only conclude on the evidence before us that the fact that some employees had joined the union was the motivating factor behind the layoff. The message being sent to the employees in this case was clear - if you exercise your right to join a trade union you will risk the loss of your livelihood. The response by the employees to that message in this case (i.e. an almost unanimous immediate desire of the employees to abandon their union membership) confirms to the Board that the message was received by the workers as anticipated and desired by Mr. Cafua. The employer's conduct in laying off the workers at the Queen Street site violated sections 65, 67(a), 67(c) and 71 of the Act.

24. Other violations of the Act are evident from Mr. Cafua's conduct. Mr. Cafua questioned Mr. Anza regarding his membership in the union, specifically asking him if he had signed a

membership card. This is clearly a violation of section 65 of the Act. Mr. Cafua's telephone call to Mr. Anderson, and his subsequent appearance at Mr. Anderson's office to present the petition executed by employees are both violations of section 65 of the Act. Mr. Cafua's participation in the origination and circulation of the petition document also constitutes a violation of section 71 of the Act.

#### **V. Applicability of section 9.2 of the Act**

25. The union requested as part of the relief to be ordered in Board file 1963-94-U that the Board automatically certify the applicant pursuant to section 9.2 of the Act, which provides as follows:

**9.2** If the Board considers that the true wishes of the employees of an employer or of a member of an employers' organization respecting representation by a trade union are not likely to be ascertained because the employer, employers' organization or a person acting on behalf of either has contravened this Act, the Board may, on the application of the trade union, certify the trade union as the bargaining agent of the employees in the bargaining unit.

26. A review of section 9.2 of the Act discloses that two criteria must be satisfied before the Board may, in its discretion, certify an applicant pursuant to the provision. First, the employer or a person acting on behalf of the employer must have contravened the Act. Secondly, the contravention of the Act must lead the Board to conclude that "the true wishes of the employees ... are not likely to be ascertained". Should the Board conclude that both of these criteria have been met on the facts of any one case, it may then apply the statutory remedy and "certify the trade union as the bargaining agent of the employees in the bargaining unit".

27. Counsel for the employer conceded that the employer had, on the facts of this case, committed a number of unfair labour practices. We have specifically concluded so above. He characterized the conduct of Mr. Cafua as being unsophisticated in nature and observed that the threat of job loss made by Mr. Cafua was for a short duration, the afternoon of September 1. It was noted that the entire complement of employees was back on the job on September 2, 1994. Counsel conceded that some employees of Domus could have connected the layoff on September 1, 1994 to the organizing drive, and acknowledged that the proximity of the layoff to the organizing drive was "a problem". However, counsel reiterated that neither Mr. Cafua nor any other manager threatened permanent job loss to any employee. Counsel also focused on the lack of evidence of other threats by management. Counsel submitted that these factors should preclude the application of section 9.2 of the Act and relied upon the Board's decision of *Ontario Bus Industries Inc.* [1989] OLRB Rep. Nov. 1115.

28. Counsel for the employer also noted the list dispute between the parties in Board file 1975-94-R, the application for certification. The employer asserts that there were asbestos removers and/or painters and painters apprentices at work on September 1, 1994, the application date, at a number of different sites. It alleges that 24 employees ought to be included in the bargaining unit for the purposes of the count. The applicant alleges that there were, approximately, 9 employees in the unit on September 1, 1994. In fact, it was evident from the evidence that Mr. Anderson believed there to be only one site (the Queen Street Mental Health Centre) where Domus employees were working on September 1, 1994, as a result of questions posed to both Mr. Anza and Mr. Cafua on that day. Counsel for Domus submitted that Mr. Anderson's organizing campaign was over by 3:15 p.m. the date it started, that the employees at the other sites were never approached by the union, and that the Board can hardly conclude that the true wishes of the employees could not be ascertained where they had been effectively sheltered from the unfair labour practices which were committed in this case.



29. Counsel for the union submitted that the violations of the Act committed by the employer were severe, not trifling. He noted the ongoing interference by Mr. Cafua, and submitted that the possible existence of other job sites was irrelevant to the application of section 9.2 of the Act. Counsel submitted, in any event, that the Board could take notice of the fact that news such as the layoff at the Queen Street site travels rapidly. Ultimately, counsel submitted that, as a result of the employer's conduct, "the well had been poisoned", and no other remedy except a certificate pursuant to section 9.2 could suffice. Counsel relied upon *Carleton University Students Association* [1993] OLRB Rep. Oct. 938; *Royal Shirt Company Limited* [1993] OLRB Rep. Nov. 1177; *CMP Group (1985) Ltd.* [1993] OLRB Rep. Dec. 1247 and *Basile Interiors Ltd.* [1994] OLRB Rep. Aug. 963.

30. Section 9.2 of the Act makes reference to "the true wishes of the employees...". There are two different ways that employees may be asked to indicate their "true wishes" on the issue of union representation - by signing a membership card or by voting by way of secret ballot in a Board ordered representation vote. If the conduct of the employer in violating the Act is such that it would create the fear of supporting a trade union in the mind of employees, then section 9.2 may be applied by the Board. In those circumstances, it is highly unlikely that even a secret ballot vote could possibly reflect the "true wishes" of the employees.

31. It is true that the layoff by the employer which had a chilling effect in the case before us was not permanent in nature. However, there is no dispute that the layoff had the effect intended. Within the hour two persons had called to "withdraw" their support for the union and within one half hour of the commencement of work the next day five of the employees at the employer's Queen Street site had called to have their cards "ripped up" or returned. It is significant that two of these workers were permitted by Mr. Cafua to call Mr. Anderson during working hours to withdraw support for the union, and that immediately after the last worker's call Mr. Cafua called Mr. Anderson to confirm that "his boys" didn't want union representation. The combined effect of the layoff and the employer's continuing campaign to oust the union (reflected in part by the employer's involvement in the petition document presented to Mr. Anderson eleven days after the layoff) makes it evident to the Board that the Domus workers at the Queen Street Mental Health Centre, at the very least, would not now execute membership cards or feel capable of voting in favour of the union in a representation vote should they desire to have the union represent them.

32. We note that the circumstances before us are similar in nature to those which were before the Board in *Zenith Wood Turners Inc.* [1987] OLRB Rep. Nov. 1443. The Board, in that case, made the following observations with which we agree:

10. The evidence establishes that half the bargaining unit was abruptly laid off within hours of the start of the applicant's organizing campaign. While the reason given to employees for the layoffs was lack of work, the timing of the layoffs would have made it clear to employees that they were connected to the organizing drive. This is one of the most serious unfair labour practices in which an employer can engage. The respondents' conduct goes to the core of the economic dependency which is the primary basis for an employee's vulnerability in the workplace. The Board has noted previously in *DI-AL Construction Limited*, [1983] OLRB Rep. Mar. 356 that a discharge is one of the most flagrant means by which an employer can influence employees:

A discharge is one of the most flagrant means by which an employer can hope to dissuade its employees from selecting a trade union as their bargaining agent. The respondent's action in discharging Mr. Holland because of his support for the union would have made it clear to employees, the depth of the respondent's opposition to the union and likely have created concerns among them that if they were also to support the union, it might jeopardize their own employment. In the face of a discharge, I doubt that employees would now be able to freely decide for or against trade union



representation. This is particularly so given the small size of the bargaining unit and the respondent's earlier conduct. In these circumstances, I am satisfied that because of the respondent's unlawful conduct, the current true wishes of the employees are not likely to be ascertained in a representation vote. Accordingly, I am of the view that the applicant should be certified pursuant to the provisions of section 8 of the Act.

We find these comments pertinent to the layoffs before us as well, and we note that the Board has found that discharges or layoffs have given rise to a finding that employees' wishes are not likely to be ascertained in a number of cases: see, for example, *Dylex Limited*, [1977] OLRB Rep. June 357; *Riverdale Frozen Foods Limited*, [1979] OLRB Rep. Apr. 338; *The Globe and Mail*, [1982] OLRB Rep. Feb. 181; *Elbertsen Industries Limited*, [1984] OLRB Rep. Nov. 1564; *Cambridge Canadian Foods Inc.*, [1987] OLRB Rep. Mar. 319, and *Zest Furniture Industries Limited*, [1987] OLRB Rep. Feb. 299.

11. In this case however, we must also determine whether the initial damage done to the ability of employees to express their wishes freely was repaired by the subsequent recall of employees and the respondents' letter. On balance, we conclude that it was not. We note that employees were not recalled and the letter was not sent until the union filed this application and the section 89 complaint. Even then, a number of employees who were recalled did not return to work for a variety of reasons. As a result, the visible effects of the unfair labour practices would continue to linger despite the respondents' efforts. The letter itself is almost word for word the same as one considered by the Board in *Elbertsen Industries*, *supra*, where the Board concluded that it was insufficient to undo the damage done by the employer's unfair labour practices. We come to a similar conclusion in somewhat different circumstances. Although the letter is relatively innocuous, it is also not particularly reassuring in light of the events which had already taken place. Mrs. Csanadi continues to make it clear in the letter that she is opposed to the union, and her testimony before the Board indicates that she is still very bitter about the union's activities and about Mr. Root's role in these events in particular. We also observe that she was blunt about expressing those views. Although she claimed she had not spoken to employees about the union at one point in her testimony, she subsequently contradicted herself in this regard and was also less than frank in other respects. Given her position and the size of this operation, we find it reasonable to infer that employees are aware of her views, whether directly or indirectly. In short, we do not think that employees are likely to feel that this letter is either particularly convincing or comforting. In fact, the last sentence suggests that the letter was written at least in part with an eye to strengthening the respondents' position on a section 8 application.

12. The Board has considered that a small bargaining unit may be a factor in determining whether a vote will reveal the true wishes of employees in a number of cases including *DI-AL Construction*, *supra*; *Primo Importing and Distributing Company Limited*, [1981] OLRB Rep. July 953, and *Rockhaven and Motels (Peterborough) Limited*, [1979] OLRB Rep. June 559. In this case, the size of the bargaining unit suggests that the anonymity which the ballot box might provide in a larger workplace cannot be relied upon to the same extent. Indeed, it was apparent from Mrs. Csanadi's testimony that she believed that she already knew to some degree which employees supported and which employees opposed the union.

13. In any event, we note that the layoffs were not directed only at union supporters. In other circumstances this might be a mitigating factor since it might weaken the connection between the union activity and the layoffs in the minds of employees. However, the timing and sequence of events in this case establishes a cause and effect relationship between the campaign and the layoffs too strongly for this fact to make a difference to the reasonable perceptions of employees. Indeed, in this case where such a connection is so clear, the indiscriminate nature of the layoffs may actually work against the ability of employees to express their views without fear. At its best, the ballot box can only protect the identity of a particular employee's choice. Employees in this case would be justified in thinking that regardless of whether the employer knew how each of them had voted in particular, there might well be general repercussions with respect to job security if a union was certified. The respondents, through the layoffs, have shifted the focus for employees from the issue of collective bargaining to the issue of job security. A vote at this point means that employees are likely to be voting on whether they wish to keep their jobs, and not whether they wish to be represented by a union. In our view, this is not a case where the alternative remedies available under section 89 would be sufficient to address the problems

described. We conclude that the true wishes of employees are not likely to be ascertained as a result of the respondents' contravention of the Act.

This case is distinguishable from that of *Ontario Bus Industries Inc.*, *supra*, relied upon by the employer. Although in that decision the Board concluded that the employer had engaged in a number of unfair labour practices, the Board also concluded that it was the intransigence of a large group of employees who firmly opposed unionization at the outset of the organizing campaign that caused the union's organizing effort to end unsuccessfully. Ultimately, the Board concluded in that decision that the true wishes of employees could be ascertained despite the unfair labour practices. Here, the situation is different. The conduct of the employer *has* clearly resulted in a situation where the true wishes of the employees cannot be ascertained.

33. Should we apply section 9.2 of the Act in light of the evidence that fifteen other employees who were not directly affected by the layoffs may well be "encompassed" by a certificate issued pursuant to section 9.2? In the ICI sector of the construction industry this may well be the result of the application of section 9.2 of the Act. Nonetheless, we conclude that we should apply section 9.2 of the Act and certify the applicant for a number of reasons. First, it would be naive to believe that the effect of the events of September 1, 2, and 12, 1994 has been confined to those present at the Queen Street site on those days. These events, if known by other Domus employees, could hardly be said to have a neutral effect on those other employees.

34. Most importantly, however, are the terms of section 9.2 of the Act. The Board is legislatively directed to focus on the ascertainment of the "true wishes of the employees" of Domus - as noted above, by either the execution of membership cards or the execution of a ballot in a representation vote. On the facts of this case, there was no evidence before the Board of employees of Domus working at the other sites who would be encompassed by the bargaining unit applied for, as the outstanding "list issues" were deferred pending the disposition of the application based on section 9.2 of the Act. However, on the evidence it is manifest that even if there were other Domus employees working at other sites who would be encompassed by the bargaining unit applied for, the true wishes of the employees of Domus who worked at the Queen Street site are not now ascertainable because of the employer's conduct. In these circumstances, the Board can, in our view, apply section 9.2 of the Act. The employer, through its conduct, has in effect "poisoned the well" by ensuring that the employees at the Queen Street site are unlikely to be able to express a voluntary view on the issue of union representation. Once the well is poisoned in this manner it becomes impossible to ascertain the true wishes of "the employees" as a group, and the legislative remedy provided for in section 9.2 may be applied by the Board. To conclude otherwise would be to reward an employer for its commission of unfair labour practices; that is, to focus on the fifteen employees at the other Domus sites to the exclusion of those at the Queen Street site would have the effect of condoning the employer's conduct. Quite simply, that approach flies in the face of the intention of the Legislature expressed by section 9.2 of the Act.

35. Accordingly, we are of the view that section 9.2 of the Act is applicable to this case and we certified the applicant by way of our decision dated October 4, 1994.

#### **VI. Appropriate Bargaining Unit**

36. The parties proposed bargaining unit descriptions in Board File 1975-94-R. In our view, the appropriate bargaining unit is as described below:

all journeymen and apprentice painters, employees engaged in the laying of resilient tiles, ceramic tiles, hardwood tiles, sheet goods, linoleum or carpets, or drywall tapers, plasterers or fireproofing applicators in the employ of the responding party in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all journeymen

and apprentice painters, employees engaged in the laying of resilient tiles, ceramic tiles, hardwood tiles, sheet goods, linoleum or carpets, or drywall tapers, plasterers or fireproofing applicators in the employ of the responding party in all other sectors in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham save and except non-working foremen and persons above the rank of non-working foreman.

For the purposes of clarity, the Board declares that asbestos removers are included in the bargaining unit.

## VII. Remedy

37. On October 4, 1994, the Board made a number of orders and declarations. These orders and declarations are outlined above in paragraph 2. In addition to those remedies, we hereby order that Domus Industries Ltd. provide each of the individuals on Schedule "A" to its Response in Board file 1975-94-R with a copy of this decision.

38. We will remain seized of both of these matters should the parties require any assistance respecting the implementation of this decision.

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**2031-94-R National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada), Applicant v. Dualux Enterprises Inc., a division of Depco International Incorporated, Responding Party v. Group of Employees, Objectors**

**Certification - Charges - Intimidation and Coercion - Membership Evidence - Board finding no substance to allegations that union's conduct created "profound fear" among employees as to whether they should join union - Evidence not supporting conclusion that union collected membership evidence through intimidation or material misrepresentation - Certificate issuing**

**BEFORE:** *Gail Misra*, Vice-Chair, and Board Members *W. A. Correll* and *H. Peacock*.

**APPEARANCES:** *Craig Grant* and *Kim Saliba* for the applicant; *Richard Anstruther*, *Nick Mattina*, *Sonya Veinot* and *Timmie McFarlane* for the responding party; *Augustine Bonsu*, *Mike Mody*, *Jelka Selak*, *Anna Smenderova* and *Ethel Perrier* for the objectors.

**DECISION OF THE BOARD;** December 5, 1994

1. This is an application for certification.
2. The Board finds that the applicant is a trade union within the meaning of section 1(1) of the *Labour Relations Act*.
3. Having regard to the agreement of the parties, the Board further finds that the unit of employees appropriate for collective bargaining should be described as follows:

all employees of Dualux Enterprises Inc., a division of Depco International Incorporated, at 340



Rexdale Blvd., Rexdale, save and except supervisors, persons above the rank of supervisor, technical employees, office and clerical staff.

Clarity Note: The parties agree that “technical employees” includes research and development technicians, quality assurance technicians and electricians.

4. A hearing was held by the Board to inquire into allegations made by a group of ten employees that they had been intimidated and coerced by union organizers in the course of the organizing drive. It was submitted by counsel for the employees that the Board should order a representation vote be held to determine the true wishes of the employees. The responding party’s counsel participated vigorously in this case and supported the position of the group of employees.

5. Over the course of two days of hearings, the Board heard the evidence of Anna Smenderova, Anna Stergar, Grace Labella, Ethel Perrier, Martin Komes, Jelka Selak, Archibald Nimmo, Stan Nowicki, Ed Malone, and Robert Fitton, all of the objecting employees. The applicant called one witness and the responding party called no evidence. In arriving at our findings of fact, the Board has carefully considered all of the evidence before it and has taken into account such factors as the demeanour of the witnesses when giving their evidence, the clarity and consistency of that evidence when tested in cross-examination, the witnesses’ ability to recall events and resist the tug of self-interest in shaping their answers, and what seems most probable in all of the circumstances.

6. The background to this hearing was that the applicant (also referred to as the “union”) filed its application for certification on September 8, 1994. Notices to the employees of the application for certification were posted in the workplace on September 14, 1994. The terminal date set by the Board for the certification application was September 19, 1994. By a letter dated September 18, 1994, and received at the Board on September 19, 1994, counsel for the group of objecting employees filed an untimely petition and an affidavit suggesting that the union had acted in a coercive and intimidating manner during the organizing campaign, had made misrepresentations and promises to employees to induce them to sign membership applications, and had harassed and pressured employees to sign membership applications. In addition, the affidavit alleged that the union had pressured females and members of minority groups, and had discriminated against a group of employees in the course of organizing. The allegations were made in an affidavit sworn by Mr. Augustine Bonsu. Mr. Bonsu never gave evidence at the hearing.

7. Following a decision of the Board (panel differently constituted) dated October 13, 1994, the group of employees provided particulars of the allegations they would be making at a hearing before the Board. However, since counsel for the group of employees had still failed to identify *who* was making the allegations, the Board (panel differently constituted in part), by a decision dated October 26, 1994, ordered that Mr. Mody provide the applicant and the responding party (also referred to as the “employer”) with the names of the employees who were making allegations against the union.

8. The October 21, 1994, letter containing the allegations made by the objecting employees is outlined below. The version reproduced has been amended at the joint request of the parties to reflect the names of the employees and some changes which the employees’ counsel made to their allegations.

“Further to your letter dated October 17, 1994, the following are the particulars of allegations from the objecting employees.

**Grace Labella:** Mary Youssef and Stella Lalonde, harassed me everyday, followed me every-

where and repeatedly asked me, on the work and outside, “did you sign the membership card, if not, why not, what have you got to lose?”

Both of them either together or alone followed me in washroom, cafeteria, left membership cards in my shop coat and followed it up with asking questions, “did you sign it?”.

They often told me that the union will get me higher wages, more prestige and power, security and peace of mind. If the union does not get certification then I may lose job, the company may close down or move to U.S.

I was so much fed up that I gave it up and signed it, not knowing whether or not I was making a right decision. I still do not understand as to what is union and why they were so much after me to get it signed?

**Ethel Perrier:** Mary Youssef and Teresa Snook, pressured me during and on the job to sign membership cards.

Mary Youssef came over every where and time, and asked me “did you sign the card?, the card are [sic] in locker; go and sign it”.

Teresa Snook, told me that the company will move to U.S. if we do not unite together. The union will bring us security, more benefits and higher wages. Both of them harassed me to such an extent that just to get them off [sic] my back I signed it. To date, I do not know what the union is and why my signature was so important.

Mary Youssef had followed me on the job while I was working and concentrating on my work. She keeps showing me the cards & telling me the cards are in Maria’s locker. Maria pushed me in the washroom and said are you going to sign or not.

**Anna Stergar:** Mary Youssef called me at my home on Sunday and said, “the union will get me higher wages, more benefits than what I have been receiving, so it is in my interest that I should sign up”.

Amy Fagundes followed up the conversations left behind by Mary Youssef, and followed me every where including during my work time, in cafeteria, washroom and put membership cards in my pocket. She wouldn’t let me go until I signed the membership card.

She put intense pressure on me during the time I was working, put cards in my pocket and on my work desk. I was blinded by the pressure.

**Anna Smenderova:** Mary Youssef came to my home on September 15, 1994 and told me to sign membership card. She followed it up by calling me at home and wouldn’t give it up. She told me that union is the best for me, will get higher wages, security and peace of mind. I was pressured, and I doubted myself whether, was it true that I will lose every thing if the union is not certified? I was confused. And when Mary Youssef showed up often, out of fear, I didn’t signed [sic] the card.

**Jelka Selak:** Mary Youssef followed me to a near by shopping plaza. She promised me that the union will get me higher wages, power and prestige. She followed me, every where and she was not giving up until I signed the card. She put intense pressure while I was on the job and working.

**Stan Nowicki:** On one occasion, at 6 a.m. when I was coming out of my car, she approached me and asked me to sign the card, let us have a union.

Mary Youssef followed me in storage room and asked me “did you sign card?, the card is in your tool box, how long does it take to signed [sic]?”.

Joan Pitter, put card in my pocket.

**Robert Fitton:** Mary Youssef followed me in cafeteria and asked me, “did you sign?, if you want to keep your job then you better signed [sic] it”.

**Archie Nimmo (Archibald):** Stella Lalonde asked me, Why don’t you sign card and forget every thing. Mary Youssef followed up intensely and asked me repeatedly, “why don’t I signed [sic]?.”

**Eddie Malone:** Mary Youssef told me that I will lose job if the union is not certified. The union will get me higher wages, security and prestige.

**Martin Komes:** Mary Youssef at least once a month asked me to sign: “The union is coming anyhow so there is no need to delay it”. I am the Chairperson of the plant for Safety and the girls in my dept. said that Mary Youssef was harassing them during work time and what can I do to keep Mary away and let them do their jobs. As a Safety pt. of view this was interfering.”

9. The opening statement on behalf of the objecting employees suggested that the evidence would show that the union’s conduct created a “profound fear” as to whether the employees should join the union or not, and would indicate that the union had collected membership applications through intimidation and material misrepresentation.

10. There is a significant body of the Board’s jurisprudence which makes clear that where there are allegations of misconduct by the union in the collection of membership evidence, the Board will assess the evidence to determine whether it casts doubt on the reliability of the membership cards submitted in support of the certification application. In a recent unreported decision, *Davis Distributing Limited*, Board File No. 1151-94-R, September 8, 1994 [now reported at 91994] OLRB Rep. Sept. 1190], the Board summarized its approach as follows:

6. In deciding whether improper conduct by a union organizer casts doubt on the voluntariness of membership evidence, the Board is conscious of the heavy reliance that it places on membership evidence filed by a trade union in certification applications. In order to protect the integrity of a certification process which depends on such evidence, the Board takes care to ensure that where improper conduct is alleged, it is satisfied that it does not cast doubt on the reliability of that evidence: see, for example, *Can-Eng Metal Treating Ltd.*, [1988] OLRB Rep. May 444.

7. At the same time, the Board is also concerned that it not impose artificial standards of behaviour that are contrary to normal human interaction. The Board has stated that it does not act as a censor of the social pressures which are common to an organizing campaign on the part of those who either support or oppose the union. It would not be a surprise if some employees find the choice a difficult one, if some employees find it harder than others to resist peer pressure from one side or another, or if some employees make a decision which they later regret. It would not be a surprise to find that some statements made during an organizing drive turn out to be wrong, are rude or annoying, or cause distress. The Board assumes that the average employee engaged in a debate about the merits of unionization with other employees has a certain level of ability to make up his or her own mind and to act in accordance with his or her own volition.

8. In order to remain realistic about the social pressures that accompany an organizing drive, the Board has stated that it will treat as qualitatively different improper conduct on the part of union officials and improper conduct by a fellow employee. Further, the Board distinguishes between physical threats and threats to job security, and comments which do not contain those elements either directly or by implication: see *The Kendall Company (Canada) Limited*, [1975] OLRB Rep. Aug. 611 and *Dupont of Canada Ltd.*, [1961] OLRB Rep. Jan. 360. The Board has also distinguished between misrepresentations which are not fundamental in that they do not relate to the effect or purpose of the membership evidence, and those that do: see *Masters Construction Ltd.*, [1988] OLRB Rep. Feb. 162.

9. In this context, the Board ultimately looks to whether the conduct at issue would deter the reasonable employee, in other words, whether the reasonable employee faced with those circumstances would be able to make his or her own decision about union representation.



In our assessment of the evidence, we have adopted the approach outlined above. The facts, as we find them, are outlined below.

11. Anna Smenderova, an employee of Dualex for four and a half years, testified that Mary Youssef, an inside union organizer, and Daniel Kaplan, a union organizer, visited her home on September 15, 1994, to induce her to sign a membership card. Ms. Smenderova insisted that this visit occurred on the date she claimed, although the application for certification was filed on September 8, 1994. Ms. Smenderova's adult son came home from work during the visit and participated in some of the conversation. Ms. Smenderova indicated in her evidence that she was not afraid of Mary Youssef, and never had been. She did not sign a membership card. To the extent that this witness's evidence is of any assistance to us in our determination, we find that Ms. Smenderova was not intimidated and felt no fear from any union organizer, so much so that she did not sign a membership card.

12. Anna Stergar has worked at Dualex for three and a half years. She testified that Ms. Youssef had called her at home and asked her to join the union in November 1992 and never again. She also indicated that another Dualex employee, Amy Fagundes, had called Ms. Stergar at home one evening in September 1994 to ask her to join the union, but Ms. Stergar told Ms. Fagundes she was undecided. According to this witness, neither Ms. Youssef nor Ms. Fagundes followed her anywhere, and Ms. Fagundes did not push membership cards on her. Ms. Stergar emphatically denied that Ms. Fagundes pressured her and indicated she was not threatened or intimidated by Ms. Youssef or Ms. Fagundes. Ms. Stergar never signed a membership application. She says most of the statements in the October 21, 1994, letter outlined above, which have been attributed to her, were not her allegations at all. She was simply contacted in 1992 by Mary Youssef, and again in September this year by Ms. Fagundes, and chose not to sign a card. As with the previous witness, Ms. Stergar's evidence indicates that there was no misrepresentation, intimidation, or coercion by the union with respect to her.

13. Martin Komes is a Press Roll Form Set-Up Lead Hand at Dualex and has worked there for four years. Mr. Komes testified he was approached by Mary Youssef about once a month for some unspecified period of time to ask him to sign a union membership card, but he did not do so. The rest of Mr. Komes' testimony consisted of hearsay evidence and the Board declines to give it any weight. There is nothing in Mr. Komes' evidence to lead the Board to conclude that the union acted improperly in the course of its organizing campaign.

14. Jelka Selak has been a General Assembler at Dualex for almost eight years. Ms. Selak alleged that Ms. Youssef followed her to a shopping plaza and talked to her for half an hour to 45 minutes about joining the union. She could not recall when this event took place, whether it was on a weekend, or weekday, and had no basis for her allegation that Ms. Youssef had followed her to the plaza. Since Ms. Selak had her son with her at the plaza, she agreed she must have been home first before the visit to the plaza, however, she could not testify that Ms. Youssef had also followed her home before the trip to the plaza. Nonetheless, Ms. Selak did recall that Ms. Youssef had promised that the union would get her higher wages, power and prestige. Ms. Selak's allegations in the October 21, 1994, letter suggest she was subjected to intense pressure and that Ms. Youssef did not give up until Ms. Selak signed a membership application. In her oral testimony, however, it became obvious that the statement in the letter was incorrect and may have been made as a result of Ms. Selak's limitations in the use of the English language. Ms. Selak testified that she was not afraid of Mary Youssef and had never signed a membership card.

15. The Board does not accept that Ms. Youssef followed Ms. Selak to the shopping plaza as there is no evidence to support such a proposition. It is more probable than not that Ms. Yous-

sef noticed Ms. Selak at the plaza and used the opportunity to speak to Ms. Selak about joining the union. As with the evidence of the other employees in the group of objecting employees, Ms. Selak's evidence does not disclose any wrongdoing on the part of the union, and it is clear that Ms. Selak was not coerced or intimidated into joining the union. We are not convinced, having heard Ms. Selak give evidence, that Ms. Selak's English language skills are such that she would have used some of the words attributed to her in her allegations in the October 21, 1994, letter. Nonetheless, we do accept Ms. Selak's evidence that Ms. Youssef told her that a union would get her higher wages. However, such a comment amounts to no more than salesmanship on Ms. Youssef's part and we do not find that it casts doubt on the voluntariness or reliability of other membership evidence collected by Ms. Youssef.

16. Stan Nowicki is a toolmaker at Dualex and has worked there for three years. Mr. Nowicki was approached about one year ago, in 1993, by Ms. Youssef and was encouraged to sign a union membership card. He testified he did not take seriously Ms. Youssef's claims about what the union could do for him. He also recalled that a year or year and a half ago Joan Pitter put an envelope in his jacket pocket which turned out to contain a union membership form. The third instance Mr. Nowicki testified to was during the recent campaign. Stella Lalonde approached him in the Dualex parking lot at 6:00 a.m. when he was arriving for work. She told him of the advantages of having a union and what had been happening with two Dualex employees. Mr. Nowicki told Ms. Lalonde he could not make a judgement about the plight of the two employees without hearing the other side of the story, and in any event, would not sign a card. There is no evidence he was approached again. Mr. Nowicki indicated he was not threatened or intimidated by Stella Lalonde.

17. Mr. Nowicki's evidence of events which occurred a year or more ago is of little assistance to us, due not only to the fact that it relates to an earlier campaign, but also because it discloses no intimidation, coercion, or material misrepresentation on the part of the union. Similarly, the meeting with Stella Lalonde discloses no such action on the part of the union or its organizers. Like all of the other employees whose evidence was put before the Board, Mr. Nowicki did not feel threatened or intimidated by his co-workers, and he exercised his right not to sign a union membership application.

18. Ed Malone, an extrusion operator, has worked at Dualex for four and a half years. He testified that Ms. Youssef had approached him around September 6, 1994, and had wanted him to sign a membership application in support of the union. She told him that if the employees had a union, the employees could get higher wages and the company could not close the door and leave. She indicated that if the company closed the next day and there was no union, then the employees would not get severance pay. However, if there was a union they could get six months' severance pay. Mr. Malone testified he did not know whether to believe Ms. Youssef but he told her he did not want a union in the workplace. Mr. Malone felt Ms. Youssef was being a pest, but she did not frighten him and he was clear that he did not want the union. It is noteworthy that this witness, like a number of the other witnesses, indicated that although the October 21, 1994, letter setting out the employee allegations quotes him as saying the union would get him prestige, he never said that.

19. Ms. Youssef appears to have outlined what she believed were the benefits which would accrue to employees if they organized their workplace. In that process, she gave some misleading information with respect to severance pay. However, Mr. Malone knew he could not believe everything he was being told, and he did not sign a card. As the Board stated in *Davis Distributing Limited*, cited above, some statements made during an organizing drive, especially by a fellow employee, may turn out to be wrong. However, the Board assumes that an average employee will have the ability to make up his or her own mind, and act accordingly. Mr. Malone did make up his



own mind and decided not to support the union despite Ms. Youssef's comments. The Board finds nothing in Mr. Malone's evidence to establish that there was union misconduct in the organizing campaign.

20. Robert Fitton, a three and a half year employee of Dualex, gave evidence of Ms. Youssef giving him a union membership card to sign in January 1993. He testified that at that time Ms. Youssef told him if the union came in he *could not* lose his job because the employer would not be able to fire anyone who signed a card. Mr. Fitton did not believe her, was not scared of her, never signed a card, and was never approached again. As with parts of Mr. Nowicki's evidence, Mr. Fitton's evidence relates to a time more than a year and a half ago. It is of no assistance to the Board in its determination of whether there was union misconduct in the campaign preceding September 1994 when the present application was filed. In any event, Ms. Youssef's comments were more akin to a sales pitch and were not threatening to Mr. Fitton's future employment prospects.

21. Archibald Nimmo has been a toolmaker at Dualex for five months. It was his evidence that in August 1994 Stella Lalonde approached him to sign a union membership card and he refused. One week later he was approached by Mary Youssef and asked to sign a card again, and he told her to "get lost". On about three occasions after that he was asked by Ms. Youssef to sign and he declined every time.

22. In cross-examination by counsel for the employer, Mr. Nimmo made further allegations which had never been raised previously and which the parties had not been advised of through the disclosure ordered by the Board. Mr. Nimmo's allegations in the October 21, 1994, letter made no mention of the instance he alluded to in cross-examination. The gist of Mr. Nimmo's claim is that while Ms. Youssef never said anything to him to induce him to sign a membership card, in her capacity as the Quality Assurance person, she may have acted improperly. He alleges that at some time around the end of August 1994 Ms. Youssef indicated to Mr. Nimmo's supervisor that there was a problem with a product coming off one of the lines. Since Mr. Nimmo was responsible for that line at that juncture, his supervisor asked him to check it. As the toolmaker, it is Mr. Nimmo's job to deal with any problems which the quality assurance people find through their visual or mechanical inspections. Mr. Nimmo was of the view there was no problem with the product. Ms. Youssef wanted him to adjust the line because in her capacity as the Quality Assurance inspector on that line that day she perceived a problem. Mr. Nimmo was upset because the line had to be shut down for about one and a half hours to deal with the concern Ms. Youssef raised. On the stand, Mr. Nimmo insisted he was correct and there had been no problem with the parts coming of that line. He agreed it was pure supposition on his part to think that this incident had anything to do with his refusal to sign a membership application in support of the union, but he felt it was a form of harassment. He said he does not feel threatened or intimidated by Ms. Youssef as she is a woman and he is a man. There was no evidence of any repercussions to Mr. Nimmo as a result of the line stoppage.

23. The Board views Mr. Nimmo's evidence with respect to the late August incident as self-serving and speculative. It would appear that Ms. Youssef was simply doing her quality assurance job, and whether Mr. Nimmo agreed with her concern or not, it was his job to service the line. It is unclear to the Board why, if this was something which Mr. Nimmo believed to have been a reprisal, he did not raise it sooner, with either his employer or his counsel. The totality of Mr. Nimmo's evidence does not disclose any intimidation, coercion, or misrepresentation by the union to Mr. Nimmo, and the evidence does disclose that Mr. Nimmo was steadfast in his refusal to sign a membership for the union.

24. Two individuals who *did* sign membership applications are among the group of employ-



ees who are alleging that the union's conduct created such a profound fear in them and that the union's conduct consisted of material misrepresentations, intimidation and coercion. The evidence and the Board's findings with respect to these two employees, Grace Labella and Ethel Perrier, are outlined below.

25. Grace Labella has worked at Dualex for a little over six years. This witness could not recall any dates, months, or simple time frames. Although the organizing campaign had been conducted in late August and early September 1994, approximately eight weeks before the hearing into this matter, she had no idea when anyone said anything to her. In cross-examination, she did recall voluntarily attending two meetings hosted by the union in 1992 or 1993, where she had met Mr. Craig Grant, a National Representative for the union. On one of those occasions she received Mr. Grant's business card which, in addition to the union's address and local telephone number, has a toll-free telephone number on it. Ms. Labella was invited to attend a union meeting in the 1994 campaign but chose not to attend.

26. Ms. Labella indicated that at some unspecified time Mary Youssef had given her two union membership applications to take home and sign, one for her and one for her husband who also works at Dualex. Ms. Labella never returned them and was later given another two by Stella Lalonde, another Dualex employee. According to Ms. Labella, Ms. Youssef and Ms. Lalonde repeatedly asked her if she had signed her membership card. Ms. Youssef apparently told Ms. Labella that she would be "guaranteed" higher wages if the union came in. In her evidence, Ms. Labella recalled that Ms. Youssef had said that if a union came in and the plant closed and went to the United States, then Ms. Labella would get a severance package. According to Ms. Labella, Ms. Youssef was referring to "Dualex 2", a sister company which had closed and gone to the United States. Ms. Labella testified that Ms. Youssef was saying the same would "probably" or "possibly" happen at Dualex if they did not get a union. Ms. Labella knew that the rumour was Dualex 2 had closed because of *having a union*. It is unclear when this conversation took place, but the witness indicated it was "maybe" in the lunchroom/cafeteria where there was a group of employees discussing the unionization. She said no such conversation took place alone with Ms. Youssef. Indeed, Ms. Labella said "they maybe talked about it" and when questioned as to who "they" may be, indicated there was a group of workers from the plant who had been having a discussion.

27. Although Ms. Labella claimed she had felt harassed by Ms. Youssef, who kept asking her if she had signed a card, she did not complain to her employer or to her husband. Her spouse is on a workplace committee designed to help anyone who needs help, but she did not approach him. Dualex also has a harassment policy in place which Ms. Labella was aware of. Ms. Labella had met Mr. Grant on two occasions and had received his business card, but she said she did not think there was any need to call him about her apparent concerns.

28. As with some of the previous witnesses, Ms. Labella indicated she had not made some of the allegations outlined in the October 21, 1994 letter reproduced above. She specifically made no allegation that she had been told the union would get her "prestige and power", and did not allege the second sentence of that paragraph, that "if the union does not get certification then I may lose job [sic], the company may close down or move to U.S.". Ms. Labella attended a meeting with Mr. Mody, counsel for the group of employees, because her sister, Ethel Perrier, told her there was a meeting against the union and because Ms. Lalonde had never thought the union would actually get far enough with its campaign to file an application. She had signed a membership card to get the organizers and her co-workers to leave her alone. She said she signed to stop them "nagging" her and to "get rid of them". She testified she was neither afraid nor intimidated

by Ms. Youssef. She was also not afraid of Ms. Lalonde, although she was a little intimidated by her. There was no evidence of why Ms. Labella was a little intimidated by Ms. Lalonde.

29. Although there may be some question about what Ms. Youssef told Ms. Labella in an effort to get her to sign a membership card, it is clear that Ms. Labella was not coerced or intimidated into signing, and signed only to stop people from asking her if she had signed. She thought the union would not get sufficient support to file an application, and she had participated in the earlier campaign in 1992 or 1993, which had not come to anything, so it appears she assumed this one would not either. It was only after the application was filed that she decided perhaps she should not have signed and then made some of the allegations now before the Board. There appears to have been some group discussion of what severance package the employees could get in the event Dualex was organized and closed down to move to the United States. However, Ms. Labella recalls Ms. Youssef's comments in the context of the group discussion as being tentative. There was no suggestion that the company *would* close down and move to the U.S., but rather that it was possible that it may, and in the event that it did, if there was a union at Dualex, the employees would get a severance package. To the extent that these comments were made by Ms. Youssef, they are more in the nature of a sales pitch than material misrepresentations. Having considered Ms. Labella's evidence, we find that at the time she signed the membership application she did so freely and without coercion. Her present allegations are made because she has changed her mind. Pursuant to section 8(4)(2) of the *Labour Relations Act*, the Board does not give any consideration to evidence of this sort tendered after the certification application date. The Board finds that the union is entitled to rely on the membership evidence tendered on behalf of this employee, as it represents the true wishes of this employee at the time she signed and at the time the membership evidence was submitted on her behalf.

30. Ethel Perrier has worked at Dualex for five years as a packer. According to her, the pressure applied to her to get her to sign a card was that she was asked repeatedly to sign, and eventually did so. At work, Teresa Snook, a co-worker, asked her to sign a card "a couple of times" and Mary Youssef asked her to sign a card "a couple of times". According to Ms. Perrier, she could not recall exactly what was said, but Ms. Snook told her Dualex may move to the U.S. if the employees did not unite together. Ms. Snook said that if the union did not come in and the company closed down, the employees would not get any severance payments. Ms. Perrier said other employees were also talking about this issue, and indeed, everyone was talking about the union, but she was emphatic that Ms. Youssef never told her about the possible company move to the United States. In any event, Ms. Perrier testified she was not sure whether she should believe what she was hearing. Ms. Snook also told Ms. Perrier that the union would get the employees higher wages.

31. Ms. Perrier signed a membership card in the women's washroom at Dualex. Ms. Perrier had gone to the washroom and was about to enter a stall when another employee, Maria, approached her with a card, asked her to sign it, and pushed Ms. Perrier at the top of her shoulder to get her to go further into the stall so that Maria could also enter. Ms. Perrier did not take offence, but said she would sign if she would not have to hear any more about the union after this. Ms. Perrier then grabbed the card and signed it. Maria and Ms. Perrier work together and while they are not good friends, they have socialized together outside of working hours. Counsel for the employer attempted to negatively characterize the occasion when Ms. Perrier signed a membership card. From the evidence before us, we conclude that there was nothing untoward in the incident, but merely two employees who know each other well who were acting in a familiar fashion towards each other.

32. According to Ms. Perrier, she was not threatened or intimidated by Ms. Youssef, and



was never scared of her. She also never felt threatened or intimidated by Maria. Ms. Perrier says she was not sure whether to believe what was being said about the union or not. She said she signed a card in large part because she did not want to hear any more about the union and just wanted Maria to “get off” her back.

33. After Ms. Perrier heard that the union had filed an application for certification, she was “pissed off” that she had signed a card when she knew she should not have. She therefore made the allegations which are the subject of this hearing.

34. From the evidence before us, there is nothing to suggest that Ms. Perrier was threatened, coerced, or misinformed to the extent that she signed a membership card as a result. She was clear that the reason she signed was because she wanted people to stop asking her whether she had signed, and talking to her about the union. Then when she realized the union had actually filed a certification application, she was angry with herself for having signed and so filed these allegations. We do not find anything in her evidence to demonstrate any wrongdoing by the union. To the extent that there were comments made about the company possibly moving to the U.S., it does not appear that those comments weighed significantly in Ms. Perrier’s decision to sign a card. As with Ms. Labella, the Board finds that Ms. Perrier had a change of heart after she had succumbed to peer pressure, had signed a card, and later realized that the union had filed a certification application. As such, her situation falls within the parameters of section 8(4)(2), and the Board declines to consider her evidence. The Board finds that the union is entitled to rely on the membership evidence tendered on behalf of this employee, as it represents the true wishes of this employee at the time she signed and at the time the membership evidence was submitted on her behalf.

35. For the reasons outlined above, the Board finds there is no substance to the allegations made that the applicant union’s conduct created a “profound fear” among the employees as to whether or not they should join the union, and did not indicate that the union had collected membership applications through intimidation and material misrepresentation. The union is therefore entitled to rely on the membership evidence it submitted for the purposes of the count.

36. In accordance with the Rules of Procedure, respecting applications for certification, the employer has filed a list of employees in the bargaining unit at the time the application was made.

37. The Board is satisfied, on the basis of all the evidence before it, that more than fifty-five per cent of the employees of the responding party in the bargaining unit on September 8, 1994, the certification application date, had applied to become members of the applicant on or before that date. In keeping with the Act’s objectives, since we find no taint in the membership evidence, we decline to order a representation vote as the applicant has the support of more than fifty-five per cent of the bargaining unit.

38. A certificate will issue to the applicant.

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**2837-94-U** Ontario Pipe Trades Council and the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 46, Applicants v. **Eastern Power Developers Corp.**, Responding Party

**Construction Industry - Discharge - Discharge for Union Activity - Unfair Labour Practice - Board finding lay-offs of five fitters related to union's certification application and therefore improper - Application allowed**

**BEFORE:** *G. T. Surdykowski*, Vice-Chair.

**APPEARANCES:** *Laurence C. Arnold* and *Brian Christie* for the applicants; *Ray Werry*, *M. Larmour* and *H. Vogt* for the responding party.

**DECISION OF THE BOARD;** December 5, 1994

1. This is an application under section 91 of the *Labour Relations Act* in which the applicant trade unions (the "U.A.") alleges that the responding employer ("Eastern Power") has violated sections 65, 67 and 71 of the Act. Upon request by the U.A. under section 92.2 of the Act, the hearing of the application was expedited.

2. Eastern Power is in the power production business. The company is presently involved in constructing a power plant at the Keele Valley Landfill Site in the City of Vaughan. This is the first time that Eastern Power has undertaken the construction of a project itself. It has performed the necessary design and engineering work, and is directly engaged in constructing the thirty megawatt electrical generating station which it also intends to operate.

3. In the application, the U.A. complains that Eastern Power terminated the employment of Bill McLees, Rob Kramer, Giovanni Raffa, Ronald Millar and Scott Morrison on October 28, 1994 because they are members of the U.A. and supported the U.A.'s application for certification (Board File No. 2283-94-R) which it filed on September 28, 1994. Eastern Power states that these five persons were laid off, not terminated, because of the shortage of work at the job site and not for any improper reason.

4. Matthew Larmour was Eastern Power's sole witness. He is the company's Project Manager for the construction of the Keele Valley Power Plant. Mr. Larmour is a Professional Engineer. Prior to joining Eastern Power in April or May, 1994, he was employed by Ontario Hydro for twenty-seven years.

5. Larmour knew Lavern Shillington from his Ontario Hydro days. He hired Shillington, who was a U.A. member, as Eastern Power's Mechanical Superintendent at the Keele Valley Project. Bill McLees is a Journeyman Plumber. He has worked in the plumbing and steamfitting trade for some thirty-five years. McLees heard about the Keele Valley Project and applied to Eastern Power for a job as a Foreman. Shillington knew McLees from Ontario Hydro as well and hired him as a journeyman, but with a view to possibly making him a Foreman later on.

6. In consultation with McLees, and the approval of Larmour, Shillington hired Kramer, Raffa, Millar and Morrison. Shillington and McLees knew Kramer and Raffa from Ontario Hydro. They did not know Millar or Morrison. Prior to October 28, 1994, McLees, Kramer, Raffa, Millar and Morrison regularly worked 10-12 hour days 6-7 days per week under the field supervision of Shillington. On October 28, 1994, Shillington and McLees unloaded components of an air pre-

heater which had been delivered to the job site, and then all six men moved the components into position for “rigging” into the powerhouse structure.

7. Suddenly and without any warning whatsoever, all five grievors were laid off at 4:30 p.m. on October 28, 1994, purportedly because of a shortage of work. Pursuant to discussions facilitated by a Board Officer with respect to this application, the grievors other than Millar (who had found work elsewhere in the interim) were recalled to work effective November 21, 1994. Since then, the grievors, and several additional “fitters” hired by Eastern Power, have regularly worked 10-12 hour days, 6-7 days per week.

8. Larmour testified that he had implemented an accelerated work schedule on the Keele Valley Project but that this had been delayed as a result of problems with the supply of materials and equipment. He testified that the grievors had been hired to do some specific fitting work which was completed on October 28, 1994. He said that the grievors were laid off at the end of that day because there was no “continuous work program” for them, or, more specifically, because there was nothing “to keep them gainfully employed in the immediate future.” Larmour testified that whether or not the grievors were members of a trade union was not a consideration in hiring. Indeed, because of the nature of the work, he expected both that they would likely be union members and that Eastern Power would “very probably” become certified. Larmour denied that the application for certification, or the grievors’ membership in the U.A. or support for that application, had anything to do with their lay-off on October 28, 1994.

9. Larmour said that a lay-off of fitters had been “cooking” for two to three weeks prior to October 28, 1994 because their work was “drying up”. He testified that without consulting or discussing the matter with anyone, including any of his Field Superintendents, he decided to lay the fitters off prior to arriving at the job site on October 28th. Larmour said that he observed Shillington and McLees unloading the air pre-heater components, and concluded that they were unable to do the subsequent necessary rigging efficiently and safely, and that this put the “icing on the cake” regarding his decision to lay the fitters off. Consequently, he proceeded to the project office, contacted Shillington and, without any discussion or explanation, directed that Shillington lay off all of the fitters effective 4:30 p.m. that day.

10. Eastern Power completed the rigging work which the laid off fitters had planned and expected to do using ironworkers it hired for that purpose. Larmour testified that it was always Eastern Power’s intention to perform the construction work on this project using a combination of its own directly hired tradesmen and subcontractors. He also testified that he had intended that the rigging of the kind that the fitters were about to begin on October 28th and complete that weekend and subsequently would be done by ironworkers. When the fitters were laid off, there was also some fitting work, unrelated to any rigging, left to be completed. This work, which Larmour estimated took approximately two “man-shifts” to perform, was completed by subcontractors on the site.

11. Section 65, 67, 71 and 91(5) of the *Labour Relations Act* provide that:

**65.** No employer or employers’ organization and no person acting on behalf of an employer or an employers’ organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of the employer’s freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence.

**67.** No employer, employers’ organization or person acting on behalf of an employer or an employers’ organization,

- (a) shall refuse to employ or to continue to employ a person, or discriminate against a person in regard to employment or any term or condition of employment because the person was or is a member of a trade union or was or is exercising any other rights under this Act;
- (b) shall impose any condition in a contract of employment or propose the imposition of any condition in a contract of employment that seeks to restrain an employee or a person seeking employment from becoming a member of a trade union or exercising any other rights under this Act; or
- (c) shall seek by threat of dismissal, or by any other kind of threat, or by the imposition of a pecuniary or other penalty, or by any other means to compel an employee to become or refrain from becoming or to continue to be or to cease to be a member or officer or representative of a trade union or to cease to exercise any other rights under this Act.

71. No person, trade union or employers' organization shall seek by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of a trade union or of an employers' organization or to refrain from exercising any other rights under this Act or from performing any obligations under this Act.

91.-(5) On an inquiry by the Board into a complaint under subsection (4) that a person has been refused employment, discharged, discriminated against, threatened, coerced, intimidated or otherwise dealt with contrary to this Act as to the person's employment, opportunity for employment or conditions of employment, the burden of proof that any employer or employers' organization did not act contrary to this Act lies upon the employer or employers' organization.

12. There is no dispute between the parties with respect to the applicable law. Eastern Power accepted the well established test applied by the Board in cases such as this. That is, the onus is on the employer to establish, on a balance of probabilities, that the conduct complained of was not motivated in any way by an attempt by its employees to exercise their rights under the *Labour Relations Act*, or by a concern that they may do so. On the "taint" theory developed by the Board, an employer is guilty of an unfair labour practice if any part of the motivation for its conduct was improper (see, for example, *Grant Development Corporation*, [1993] OLRB Rep. Jan. 21 at paragraph 48). When applications like this one are litigated, there will rarely be a "smoking gun". Generally, the Board must base its decision on the inferences which can reasonably be drawn from the evidence.

13. In this case, Eastern Power adamantly denies that any part of the motivation for the lay-offs was improper. It argues that the work which the five laid-off fitters were hired to do was substantially done, that the timing of the lay-off, a month after the application for certification was filed, suggests that the lay-off was unrelated to it, and that in laying off the fitters Larmour made a decision that as Project Manager he was entitled to make and that he made it on the basis of his assessment of the work left to be done and the fitters ability to do it, without regard to anything having to do with the fitters' rights under the *Labour Relations Act*. Eastern Power submits that the real dispute in this case is jurisdictional; that is, over the right to do rigging work. It submits that Larmour determined, having regard to his long experience at Ontario Hydro, that the rigging work should not be done by the fitters. In that regard, Eastern Power points out that Larmour was used to dealing with trade unions from his days at Ontario Hydro. In response to the U.A.'s suggestion that Eastern Power was seeking to complete as much as possible of the construction of the Keele Valley Project prior to the inevitable certification, the company suggests that if that were so, it would have been more logical for it to have kept the fitters on and pressed on with the work. Eastern Power submits that the fact is that there was no work for the fitters to do.

14. Rigging has been and continues to be a source of jurisdictional friction between the



Building Trades' unions. It is neither necessary or appropriate for me to make any jurisdictional assessment or determination in this case. With respect to the rigging work, it is the motivation for the assignment of that work which is in issue, not its correctness.

15. Building Trades unions jealously guard what they perceive to be their respective trade jurisdictions. This, combined with a natural ebb and flow in work on most construction job sites, means that lay-offs and recalls of tradesmen are not unusual. Nor are departures from construction schedules unusual. The nature and extent of such departures are often as unique to the particular project as the construction schedule itself. It is a Project Manager's job to manage the construction schedule and to coordinate the construction work and the manner in which it is done. To perform this function, a Project Manager must have his/her fingers on the pulse of the job. For this s/he generally relies upon information s/he receives from others on the job site, particularly the field superintendent(s) on the job.

16. It is inconceivable that Larmour would not have discussed with his Field Superintendents both their and his plans or ideas for the scheduling and performance of work on the Keele Valley Project. In this particular case, I find it very unlikely that Larmour and Shillington would not have discussed how the off-loading, moving, rigging and installation of mechanical components or equipment would be done. I also find it unlikely that a Project Manager like Larmour would make a decision to lay-off all employees of a particular trade because of a shortage of work without consulting his Field Superintendent for that trade. Further, in this case, the evidence suggests that there was no imminent shortage of work which justified such an abrupt lay-off of all the fitters, without any explanation to them or their Field Superintendent. The uncontradicted evidence is that Shillington, the Mechanical Field Superintendent, planned to have the fitters perform the rigging of the various mechanical equipment or components, and that, the rigging of the air pre-heater components delivered on October 28th was scheduled to be performed by the fitters beginning that day. I am satisfied on a balance of probabilities, that it is reasonable to infer that Larmour was aware of this.

17. I am also satisfied that there was nothing which Larmour observed on October 28th which either justified the lay-off or his conclusion that the fitters could not do the rigging required. Larmour said that he arrived at this conclusion on the basis of how Shillington and McLees unloaded and were preparing to move the air pre-heater components, and his experience and intuition in that respect. However, in cross-examination Larmour conceded that the manner in which Shillington and McLees did this work was in accordance with normal trade practice, and he was unable to suggest an alternative way to do it. Further, in a jurisdictional dispute complaint in *Electrical Power Systems Construction Association*, [1992] OLRB Rep. Aug. 915 (which concerned work at the Ontario Hydro Lakeview Thermal Generating Station at a time when it appears that Larmour was employed there by Ontario Hydro, the Board directed that the unloading and lateral transport of mechanical equipment which Ontario Hydro planned to do in substantially the same way as the fitters did it in this case, be assigned to members of the U.A.) If Larmour had any concerns about the way this work was being done, why did he permit it to continue? Why didn't he ask Shillington or McLees why the work was being carried out in this manner and ask them about their intentions with respect to the remainder of the work? Why did Larmour not make any inquiries of Shillington or the fitters regarding their abilities to perform either this or their rigging work? Larmour was unable to offer any explanation why he did none of those things. Instead, he went to his office, called Shillington and told him to lay the fitters off at the end of the day, effectively allowing them to continue to perform work which he said he did not think they were able to do efficiently and safely until the end of the working day.

18. Larmour said that his assessment of the fitters' abilities were merely the "icing on the

cake”, and that he never intended to have fitters do the rigging work anyway. On the evidence before the Board, this was news to both Shillington, the Mechanical Field Superintendent, and to the fitters.

19. In any event, according to Larmour, the real reason for the lay-off was the shortage of fitting work quite apart from any rigging. His assessment was that there were only two man-shifts of fitting work left of the work the fitter had been hired to do. Given his accelerated work schedule, why not let one or two of the fitters do that work? But Larmour didn’t, and when the fitters were laid off at 4:30 p.m. on October 28, 1994, they left behind them work they had left uncompleted when called by Shillington and McLees to assist them with the air pre-heater components. Further, even counsel for Eastern Power conceded there may have been as much as four man-shifts of fitting work left. On the evidence, I estimated as eight man-shifts or more. All of the uncompleted fitting work was performed by subcontractors.

20. In addition, if the lay-offs were temporary until the supply and access difficulties were resolved, as Larmour said they were intended to be, why were neither Shillington or the fitters given any indication of when they might be recalled, or even that they would be recalled at all.

21. Finally, the timing of their lay-offs is not inconsistent with an improper motive. There is nothing in the evidence which suggests that the lay-offs had any impact on the construction work at the project. Eastern Power simply had the work which the fitters expected and were scheduled to perform done by other persons, who were unconnected with the U.A.’s organizing campaign or application for certification. In addition, the lay-offs occurred a month after the U.A. filed its application for certification. This is consistent with Eastern Power’s assertion that there was no connection between the lay-offs and anything having to do with the application for certification. However, it is equally plausible that this is an informed employer might wait until sufficient time had passed that such a connection would not be obvious.

22. On the basis of the evidence in this case, I am satisfied that it is reasonable to infer that at least part of the motivation for the decision to lay-off the five fitters herein was related to the U.A.’s application for certification and therefore improper.

23. In the result, having regard to the evidence before the Board, I am satisfied that the lay-offs of Bill McLees, Robe Kramer, Giovanni Raffa, Ronald Millar and Scott Morrison were intended to and had the effect of interfering with the selection by these employees of the trade union of their choice in the exercise of their rights under the *Labour Relations Act*, and that these five persons were laid-off because the company knew or suspected that they had exercised their rights under the Act by supporting the U.A.’s application for certification, contrary to sections 65, 67 and 70 of the Act.

24. I therefore declare that Eastern Power has violated sections 65, 67 and 71 of the *Labour Relations Act*.

25. All five grievors have been recalled to work by Eastern Power, (although one of them has found work elsewhere). Accordingly, no reinstatement order is necessary. Nor do I find it appropriate to make any other remedial order at this time. Instead I will remain seized with the issue of remedy, including any compensation which may be owing to the grievors, and remit the same to the parties to resolve if they can. The parties are directed to report the status of the issue of remedy to the Board within thirty days of the date hereof. In the event that the parties are unable to resolve the matter between them, the Board will schedule a hearing to deal with it upon the written request of either of them.

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**0019-93-R; 1103-93-M George Jeffrey Children's Treatment Centre, Applicant v. Service Employees Union, Local 268, Responding Party; Service Employees Union, Local 268, the Union v. George Jeffrey Children's Treatment Centre, the Employer**

**Bargaining Unit - Combination of Bargaining Units - Hospital Labour Disputes Arbitration Act - Reference - Board finding residential care programme of children's treatment centre to be "hospital" within meaning of Hospital Labour Disputes Arbitration Act, and that whole of treatment centre also a "hospital" within meaning of the Act - Union holding bargaining rights for unit of employees working in group homes in residential care programme and for two units of therapists at treatment centre - Union's application to combine bargaining units allowed**

**BEFORE:** *Pamela Chapman*, Vice-Chair.

**APPEARANCES:** *Stephen J. Wojciechowski, Laura McGowan, Mike Kubinec, Margaret Fulton* for the applicant; *Glen Oram, Bill Liggins, Janine Letwin, Roy Sportak, Jeff Rooney and Roberta Thompson* for the responding party.

**DECISION OF THE BOARD;** December 9, 1994

1. Board file 0019-93-R is an application for combination of bargaining units pursuant to section 7 of the *Labour Relations Act*, which was filed by the applicant ("the employer") on March 26, 1993. The employer seeks to combine the following three units of employees represented by the responding party ("the union") into a single unit:

all Speech Language Pathologists, Speech Therapists, Augmentative Communication Assistants, Physiotherapists, Occupational Therapists, Physiotherapy Assistants, Social Workers, Education Consultants, Therapy and Rehabilitation Technicians and Volunteer Co-Ordinators employed by George Jeffrey Children's Treatment Centre in the City of Thunder Bay, save and except Supervisors and persons above the rank of Supervisor, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period;

all Speech Language Pathologists, Speech Therapists, Augmentative Communication Assistants, Physiotherapists, Occupational Therapists, Physiotherapy Assistants, Social Workers, Education Consultants, Therapy and Rehabilitation Technicians and Volunteer Co-Ordinators employed by George Jeffrey Children's Treatment Centre in the City of Thunder Bay, who are regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except Supervisors and persons above the rank of Supervisor;

all employees of George Jeffrey Children's Treatment Centre employed in Residential Care in the City of Thunder Bay, save and except Supervisors, persons above the rank of Supervisor, Office and Clerical Staff, Maintenance and Custodial employees, and employees in the bargaining units for which any trade union held bargaining rights as of September 2, 1992.

2. Board file 1103-93-M is a ministerial reference pursuant to section 3(2) of the *Hospital Labour Disputes Arbitration Act* ("HLDAA"), which was referred to the Board by the Minister on June 23, 1993. This reference followed an initial request by the union, on February 12, 1993, for a determination by the Minister that the residential care program of the George Jeffrey Children's Treatment Centre ("George Jeffrey" or "the employer") falls within the jurisdiction of the HLDAA. The questions which have been referred to the Board for its advice are the following:

Is the George Jeffrey Children's Treatment Centre Residential Care Program a "hospital" within the meaning of the Hospital Labour Disputes Arbitration Act?



If so, should this ruling apply to the whole of the George Jeffrey Children's Treatment Centre?

3. By decision dated May 2, 1994, the Board ordered that the two applications, that is the combination application filed by the employer, and the ministerial reference initiated by the union, be consolidated and dealt with together. Both parties filed extensive written submissions, including documents, and two days of hearing were held on June 27 and 28, 1994. At that time, the parties filed a "Joint Submission" which set out the facts upon which they had been able to agree. In addition, I agreed to take a view of the premises in issue, and as a result toured each of the buildings operated by the employer, together with counsel for each party, one representative of management, and an employee. Two witnesses were called by the employer, and a number of additional documents were admitted into evidence by agreement.

4. While the two proceedings were consolidated and heard together, as noted above, I intend in this decision to deal first with the ministerial reference, as it was initiated by the union prior to the application for combination having been filed by the employer. I note that the evidence and argument proceeded in the same order at the hearing in this matter. I will begin, however, by setting out the facts, which as noted above were not largely in dispute. For this reason, I will provide a general, rather than a detailed, review.

#### THE FACTS

5. George Jeffrey is a facility in Thunder Bay which offers a variety of services to children and young adults with special needs living in north-western Ontario. For the purposes of these applications, it is useful to divide it into two parts: the residential care program, which operates a number of group homes housing young adults with physical and/or developmental handicaps; and the non-residential programs, which are delivered from the employer's main premises at 507 North Lillie Street ("Lillie Street").

6. As is clear from the bargaining unit descriptions set out in paragraph 1 above, the union holds bargaining rights for three different units: one unit of full and part-time employees working at the group homes in the residential care program; and two units, one of full-time and the other of part-time employees, working at Lillie Street as speech language pathologists, speech therapists, augmentative communication assistants, physiotherapists, occupational therapists, physiotherapy assistants, social workers, education consultants, therapy and rehabilitation technicians and volunteer co-ordinators. For ease of reference, I will refer to the latter two units as the "therapy" units. The employees in the therapy and residential care groups do not interact during a normal work day, and there has been no history of movement between the two groups.

7. The therapy units were certified on July 7, 1992, and the residential care unit on September 16, 1992. While bargaining has commenced with respect to both groups, no collective agreements have been made.

8. In the residential care program, George Jeffrey operates three group homes housing up to 12 clients, at various locations throughout the city. According to the program's "Guidelines for Admissions", those persons accepted for residency must be young adults with physical and/or multiple disabilities requiring support services of a physical, medical, or money management nature, who are compatible with the other residents of the home, and capable of benefiting from the programs and environment. The physical support specifically referenced in the admission criteria is with respect to mobility, eating, dressing, bathing, toileting, shopping, communication, laundry and housekeeping. Priority is given to those confined to hospitals, nursing homes, and homes for the aged, or at home with family members/caregivers and in danger of institutionalization.

9. I was provided with information about the 11 current residents of the home. (Some information was provided at the hearing about the resident who recently filled the remaining vacancy, but as that information was not complete I have not included it here.) There are presently six females and five males, between the ages of 22 and 33 years, divided evenly between the three houses. Ten of the residents have conditions which have resulted in physical disabilities, including cerebral palsy, spina bifida, quadriplegia, spastic hemiparesis, and epilepsy. In addition to these physical challenges, eight of the ten are developmentally delayed, five minimally and three severely. The other two are memory impaired due to an acquired brain injury. The eleventh resident has no physical disability, but is severely developmentally handicapped.

10. As a result of these disabilities the clients have a number of special needs and restrictions on their abilities. Five use a wheelchair, one uses a wheelchair or a walker, and two additional clients use a wheelchair outside of the home. Four of these clients also require the use of a hoist lift to transfer them from their chairs into bed, the shower, etc.. One resident uses a speech board for communication; two are non-verbal and two others have speech impairments. The clients take a number of medications, including anticonvulsants, multivitamins, sedatives, tranquilizers, gastroesophageal reflux therapy, stool softeners, a histamine receptor antagonist, and various creams and ointments.

11. The clients require assistance generally with bathing, dressing, toileting, and eating, sometimes with resident participation. Staff assist in lifting and transferring residents, sometimes with resident participation, and depending on their needs. They assist some of the residents with a basic range of motion exercises following the instructions of a physiotherapist, and assist residents in taking their medication, ranging from distributing medication to those clients who can take it themselves, to putting the medication in clients' mouths. No injections are given. Staff are also required to carry out bowel disimpactions and to change dressings. They attend to residents having seizures in order to ensure their safety. Any more significant medical needs would be met by the attendance of a VON nurse or other community agency at the home, or by taking the resident to see a doctor or to a local hospital.

12. Staff also assist residents in grocery shopping, meal preparation, housekeeping and laundry. Some residents are able to participate in these activities to varying degrees.

13. Finally, staff arrange for and accompany most clients to medical and dental appointments.

14. The parties attempted to characterize these various needs as "low", "moderate", "moderate to high", or "high". They defined "low needs" as meaning that assistance is mainly of a supervisory nature, "moderate needs" as requiring some assistance with resident participation, "moderate to high needs" as requiring assistance, and "high needs" as being totally dependent on the support staff. The residents were then described as follows:

## House #1

Female - moderate to high personal care needs

Male - moderate to high personal care needs

Female - low personal care needs

## House #2

Female - moderate personal care needs with high medical needs

Male - high personal care needs with low medical needs

Male - high personal care needs with moderate medical needs

Female - low personal care needs with low medical needs

## House #3

Male - high personal care needs with low to moderate medical care needs

Female - moderate to high personal care needs with high medical needs

Female - low to moderate personal care needs with low medical care needs and moderate to high behavioural care needs

Male - moderate to high personal care needs, moderate medical care needs with low behavioural care needs

15. Approximately fort-two staff provide these various services to the clients on a 24 hour-per-day basis. The bargaining unit staff are generally classified as either Residential Care Workers, working rotating shifts during the day, afternoon, and evening, Night Care Workers, who work on the overnight shift, and part-time Relief Staff, who are called in as needed to cover for other staff. All of these positions require employees to "provide high quality care in a home like environment that encompasses all facets of the client's needs and promotes ultimate individual independence". Each group home also has a House Supervisor, which position is outside the bargaining unit, and a Housing Co-ordinator is in charge of the residential care program as a whole. In addition, there is a non-bargaining unit position called Life Skills Worker, which is currently held by two different people on a contract basis.

16. The houses themselves are small bungalows located in residential neighbourhoods. While they have been renovated to make them as accessible as possible, and to install special equipment such as hoist lifts, special efforts have been made to retain a home-like atmosphere. Each of the residents has his or her own bedroom, and they share bathrooms, the kitchen, dining room, and other common living areas. One room in each house is set aside for staff use and functions as a small office.

17. The remainder of the programs at George Jeffrey are delivered from their main facility on Lillie Street, which is a large building housing numerous offices, meeting rooms, treatment rooms, and a day-care centre (which is not staffed by members of these bargaining units and is thus not affected by the present applications). No-one resides at this location, and all of the programs are thus delivered to clients who visit Lillie Street, or indeed out in the community in the case of the School Health Support Services Program, generally during normal office hours. The clients of the non-residential treatment programs are children and adults with special needs.

18. The Augmentative Communication Program provides for the assessment of children and adults with face to face and/or written communication difficulties, the prescription of a system for augmenting communication where appropriate, which may include boards which utilize pictures, symbols, Bliss symbols, words or alphabet, and/or electronic aids including computers, customizing equipment for clients including software and hardware modifications, providing training and follow-up to clients, and loaning equipment to clients throughout Northwestern Ontario. The employees working in this area include a Medical Consultant who conducts assessments, a Rehabilitation Engineer, and in the bargaining unit, a Speech Language Pathologist, Occupational



Therapist, Rehabilitation Technologist, Education Consultant, and Augmentative Communication Assistant.

19. The Seating Program offers assessment of children and adult clients and prescription where appropriate of assistive seating devices, including wheelchairs and adapted strollers. Bargaining unit employees delivering this service include an Occupational Therapist, Physiotherapist and Seating Technician.

20. The School Health Support Services Program provides services to children at their schools. Therapy staff from George Jeffrey attend at schools and provide assessment of children with physical disabilities, fine-gross motor problems, communication difficulties and/or learning disabilities, treatment or prescription of assistive devices where required and appropriate in the school setting, consultation with teachers and parents, counselling, in service training, and development of suitable programs. The Occupational Therapist, Physiotherapist, Speech Language Pathologist and Social Worker, all bargaining unit staff, are involved in this program, together with a Case Manager from the Thunder Bay Home Care Program, an outside agency which runs the program, and a Liaison Teacher with the Board of Education.

21. Finally, the Centre Client Services Program provides a variety of services to clients with special needs on an out-patient basis. The Social Worker provides support and resource services to clients and their families, including referrals to the appropriate community services, counselling, advocacy, and the recruitment and supervision of home workers. Physiotherapy is offered through a Physiotherapist who assesses and then treats difficulties with movement. An Occupational Therapist assesses sensory, fine-gross motor and visual perception skills as they relate to self-care, productivity and leisure, and then provides therapy, education and/or prescription of assistive devices to aid in the development of these skills. The Speech Language Pathologist assesses communication difficulties and intervenes to provide treatment where infants and children are at risk for communication delay or disorder. And an Itinerant Teacher, a position outside of the bargaining unit, provides a link between George Jeffrey staff, clients, their families and their schools.

22. The final factual area which was explored by the parties is the status of George Jeffrey under the *Public Hospitals Act*, R.S.O. 1990, c.P-40 ("PHA"). The union submitted a letter from an official of the Ministry of Health, Community Hospitals Branch, which stated that as of November 20, 1992, George Jeffrey was listed under Group K of Regulation 964 under that Act. The employer acknowledged that George Jeffrey was listed as a hospital under the regulations to the PHA, but called evidence to establish that this designation was only for the purposes of retaining capital funding, and that the Ministry of Health had transferred the responsibility for program management of children's treatment centres, including George Jeffrey, to the Long Term Care division of that Ministry, effective July 1, 1993. According to the witness called by the employer, who is the Assistant Executive Director of Administrative and Support Services, the Association of Treatment Centres of Ontario, of which George Jeffrey is a member, has been working for some time to effect this move, which they expect will eventually result in children's treatment centres being removed from the jurisdiction of the PHA, once legislative amendments are drafted. The employer offered no evidence, however, as to when this change will be effected, or even of any clear commitment by the government to remove George Jeffrey from the list of hospitals under the regulations to the PHA.

#### MINISTERIAL REFERENCE

##### Jurisdictional Objection

23. George Jeffrey made two objections to the jurisdiction of the Board to deal with the

ministerial reference. The first had to do with the second question referred by the Minister. As noted above, the question first put to the Minister by the union as to the application of the HLDAA dealt only with the residential care program of the applicant. After reviewing the parties' submissions, however, the Minister chose to refer the two questions set out in paragraph 2 above.

24. George Jeffrey took the position that the Minister of Labour was without jurisdiction to refer to the Board the second question set out in the reference dated June 23, 1993. Put simply, the employer submitted that the Minister should not have referred to the Board a question which he himself was not asked. For the Board to answer this question, then, in the submission of the employer, would constitute an error of law.

25. The second objection had to do with the timing of the request made to the Minister by the union and the Minister's subsequent referral to the Board. The employer argued that the Minister had no jurisdiction to answer or to refer the question in June, 1993, as the parties had not yet entered into, much less exhausted conciliation.

26. The following are the sections of the HLDAA relevant to the present application:

1.- (1) In this Act,

"hospital" means any hospital, sanitarium, sanatorium, nursing home or other institution operated for the observation, care or treatment of persons afflicted with or suffering from any physical or mental illness, disease or injury or for the observation, care or treatment of convalescent or chronically ill persons, whether or not it is granted aid out of moneys appropriated by the Legislature and whether or not it is operated for private gain, and includes a home for the aged; ("hôpital")

"hospital employee" means a person employed in the operation of a hospital; ("employé d'hôpital")

"Minister" means the Minister of Labour; ("ministre")

"party" means the trade union that is the bargaining agent for a bargaining unit of hospital employees, on the one hand, or the employers of such employees, on the other hand, and "parties" means the two of them. ("partie", "parties")

2.- (1) This Act applies to any hospital employees to whom the *Labour Relations Act* applies, to the trade unions and councils of trade unions that act or purport to act for or on behalf of any such employees, and to the employers of such employees.

(2) Except as modified by this Act, the *Labour Relations Act* applies to any hospital employees to whom this Act applies, to the trade unions and councils of trade unions that act or purport to act for or on behalf of any such employees, and to the employers of such employees.

3.- (1) Where a conciliation officer appointed under section 16 of the *Labour Relations Act* is unable to effect a collective agreement within the time allowed under section 18 of that Act, the Minister shall forthwith by notice in writing inform each of the parties that the conciliation officer had been unable to effect a collective agreement, and sections 17 and 19 of the *Labour Relations Act* shall not apply.

(2) The Minister may refer to the Ontario Labour Relations Board any question which in his or her opinion relates to the exercise of his or her power under subsection (1) and the Board shall report its decision on the question.

4. Where the Minister has informed the parties that the conciliation officer has been unable to effect a collective agreement, the matters in dispute between the parties shall be decided by arbitration in accordance with this Act.



27. These sections establish the basic scheme of the HLDAA. If an institution is determined to be a hospital within the meaning of section 1(1), then the HLDAA applies to its employees who bargain collectively within the meaning of the *Labour Relations Act*, and to their bargaining agent(s) and to the employer, wherever the provisions of the HLDAA differ from the Act. Sections 3 and 4 establish the main difference in the schemes of the two Acts with respect to collective bargaining, which is that the Minister under HLDAA does not issue a no-board report if conciliation is unsuccessful, which would otherwise be required by sections 17 and 19 of the Act. Instead, a collective agreement is settled by arbitration.

28. Section 3(2) states that the Minister may refer to the Board *any question which in his or her opinion* relates to the notice to the parties that conciliation has failed, and that the Board *shall report its decision on the question* (emphasis added). Thus, a question may arise, and often does, as to the application of section 3, and thus section 4, to the bargaining unit at a particular institution, requiring an answer to the question of whether or not that institution is a hospital within the meaning of section 1(1).

29. On its face, this power to refer questions to the Board is not limited to any question raised by the parties, or to any particular time period. Indeed, there is no reference anywhere in the HLDAA to questions as to the status of an institution being raised by anyone other than the Minister, although practically that is how they generally come to the attention of the Minister. It is difficult to accept, therefore, that the Minister is limited in any way by the question or questions framed by the parties. Similarly, the Act does not support the notion that the Minister may only refer a question as to HLDAA designation after conciliation has commenced or been completed. (It is also important to note that the written submissions filed by the employer indicate that conciliation has begun with respect to the therapy bargaining units, with one date held on June 21, 1993; the date on which conciliation was requested is not provided.)

30. In any event, the Board is required by section 3(2) of the HLDAA to report its decision on any question put by the Minister which in *his or her* opinion is relevant to the application of section 3(1), which suggests that the determination of jurisdiction under this section is a power which rests with the Minister, rather than with the Board. In this regard, I agree with the comments made by the Board in paragraphs 12 and 13 of the decision in *Surex Community Services* (unreported decision, Board file 0583-94-U, dated October 28, 1994) [now reported at [1994] OLRB Rep. Oct. 1430], which was issued since this case was argued, as to the limited mandate of the Board in the case of a ministerial reference.

31. For these reasons, I have concluded that I am bound to answer both questions referred by the Minister.

#### Residential Care Program

32. The first question put by the Minister, and the one raised by the union, is whether or not the residential care program of George Jeffrey is a hospital within the meaning of HLDAA.

33. Having regard to the definition, and to the facts outlined above concerning the residents of the group homes and the services provided to them by staff, the residential care program would appear at first instance to be an "other institution operated for the observation, care or treatment of persons afflicted with or suffering from any physical or mental illness, disease or injury" or of "chronically ill persons". George Jeffrey advanced a number of arguments, however, as to why the definition of "hospital" in the HLDAA does not apply to the residential care program.

34. Counsel took the position that in interpreting the term "other institution" I must con-



sider whether or not George Jeffrey bears sufficient resemblance to other types of institutions specifically named in the section, that is hospitals, sanitariums, sanatoriums, nursing homes and homes for the aged. The qualities which he asserted are common to these facilities are their medical nature, the fact that there is a residential or custodial component to the facility, and that the clients are ill, diseased, injured, or chronically ill. The employer argued that none of these factors are present here.

35. The argument that the observation, care or treatment of persons in a HLDAA institution must be of a medical nature has been previously considered by various Ministers of Labour and also by the Divisional Court. In *Dignicare Incorporated c.o.b. as Orleans Community Health Centre*, (Divisional Court, File No.462/90, February 12, 1991, unreported), the Court quashed the decisions of two Ministers that the institution in question was not HLDAA designated, stating as follows:

...(T)he Ministers erred in determining that an institution would fall within the definition of "hospital" in the Act only if the care, observation or treatment provided by the institution was of a medical nature and only if the institution was similar in nature to a hospital, sanatorium, sanitarium, or nursing home...In our view, in light of the purpose of the Act the observational care provided by an institution to its residents need not be of a medical nature to bring the institution within the definition of "hospital" and within the scope of the Act...

36. The argument about medical nature made by the employer in the present case appears to be exactly the one rejected by the Divisional Court in *Dignicare*. Counsel for the employer submitted, however, that the Court in that decision did not preclude the consideration of whether or not the care was of a medical nature, but only said that it must not be the only basis for a determination under HLDAA. I cannot accept this argument, given the clear statement by the Court that the observation, care or treatment referenced in the Act need not be of a medical nature. For this reason, even if I conclude as the employer urged that none of the observation, care or treatment provided by staff to the clients in the residential care program is of a medical nature, this does not assist me in answering the question referred by the Minister. I am satisfied, and it was not seriously disputed by the employer, that the services provided by staff to the clients of the group homes do constitute observation, care or treatment, which are the terms set out in the HLDAA.

37. Continuing with his argument about the essential qualities of the enumerated institutions in the definition, counsel for the employer submitted that group homes operated by George Jeffrey are not residential in the same sense as a hospital or nursing home, as they are not "institutional" in nature. Instead, they are very much "homes", as should have been clear from the view I took of the three residences.

38. With respect, I have concluded that this is a distinction without substance. The group homes in question are not private homes, but are fully staffed residences offering services unavailable to those living in private homes. In that sense, they can properly be termed "institutions" as that term appears in the HLDAA.

39. I must comment that the employer's arguments on this point, and in other parts of counsel's submissions, seem to arise from its abhorrence of the concept of "institutionalization", which it seems to link with the terms "institution" and "hospital" as they appear in HLDAA. It is understandable that an agency like George Jeffrey, which is based on a commitment to "de-institutionalization" and "independent living", would attach a stigma to the term "institutionalization". The use of those terms in the HLDAA, however, has nothing to do with arguments about the best way to deliver services to persons with special needs, in the community or elsewhere, but rather is focused entirely on a narrow labour relations purpose: to ensure the continuation of ser-

vices to persons with special needs as defined in the HLDAA, wherever they are delivered, in the event of a breakdown in collective bargaining.

40. The final part of the employer's argument about the analogy between "other institutions" and those enumerated in the HLDAA definition had to do with the question of whether or not the clients of George Jeffrey are ill, chronically ill, diseased or injured. This would seem to be a relevant question even if I do not accept the employer's assertion that an "other institution" must be similar to those named in the section, given that the definition of "other institution" goes on to say that it must be operated for the care, treatment or observation of "persons afflicted with or suffering from any physical or mental illnesses, disease or injury" or "convalescent or chronically ill persons".

41. George Jeffrey argued that the disabilities, both physical and developmental, which the clients in the residential care program suffer from are not illnesses, diseases or injuries, as they are permanent conditions which cannot be treated with a view to a cure. Again, this is a distinction which I cannot accept. First of all, the very language used in the definition seems to contradict the notion of a "cure" being integral to the idea of an illness, disease or injury, as it specifically goes on to refer to chronic illnesses. Secondly, any dictionary definition would counter this assertion (see for example the definitions cited at paragraph 63 of the Board's decision in *Surex Community Services*, *supra*, reproduced in paragraph 42 below).

42. In *Surex Community Services*, *supra*, the Board faced an argument by the employer that developmental handicaps did not fall within the terms "physical or mental illnesses, disease or injury". The Board dealt with this argument as follows:

...

63. Counsel for Surex argued that Surex residents are not persons "afflicted with or suffering from any physical or mental illness, disease or injury" and are not "chronically ill persons". The Shorter Oxford English Dictionary (Third Edition, Volume I) defines the words "illness", "disease", "injury", and "chronic" as follows:

**Illness ... 3.** Bad or unhealthy condition of the body (or, formerly, of a part); the condition of being ill (ILL a. 8); disease, ailment, sickness. ...

**Disease ... 2.** A condition of the body, or of some part or organ of the body, in which its functions are disturbed or deranged. ...

**Injury ... 3.** Hurt or loss caused to or sustained by a person or thing; harm, detriment, damage; an instance of this ME. ...

**Chronic ... 2.** ... Lasting a long time, lingering, inveterate; opp. to *acute* 1601. ...

64. From the evidence and submissions before me, it is clear that all of the residents of Surex suffer from some medical problem which has caused them to be developmentally handicapped. The residents suffer degrees of developmental handicap ranging from mild to profound. Those with more severe forms of developmental handicap need a great deal of care to manage the most basic tasks of daily living. Dr. Jacobs, in his evidence, agreed that to be developmentally delayed is a permanent condition of mental retardation. He, however, was of the view that one should look to each individual's capability or potential rather than at his or her disability. One does not have to disagree with Dr. Jacobs' latter proposition to find that the residents of Surex have special needs because of their physically and mentally impaired conditions, needs which can only be met through the provision of specialized care, observation, and treatment.

65. In addition to their developmental handicaps, the majority of Surex residents also suffer from some other medical condition. Epilepsy, Scoliosis, Schizophrenia, Manic Depressive Dis-



order, Alzheimer's Disease, and various forms of mental illness are found among the resident population.

66. I am satisfied that on a purposive reading of the definition of "hospital" in the HLDAA, and having regard to the dictionary definitions of "illness, disease or injury", the services provided by Surex fall within the "hospital" definition to the extent that Surex is an institution which is operated for the observation and care of persons who are afflicted with or suffer from physical and mental illnesses, diseases or injuries. This finding is not to be taken to suggest that a developmental handicap is a disease or a mental illness, but it is to say that a developmental handicap may be the result of a disease, illness or injury experienced pre-natally or during birth. Surex residents have sustained some hurt or loss of functioning, and the normal functioning of their persons has been chronically disturbed. In any event, I see no reason to distinguish between conditions brought about by disease, illness or injury, and the disease, illness or injury itself, especially where the level of care required to deal with the person's condition may be greater than that provided by hospitals. In addition to being persons with developmental handicaps, most of the residents of Surex do also suffer from other physical and mental illnesses which require special observation, treatment, and the administration of medication.

43. That reasoning is equally applicable to the present case, where each of the residents have either a physical or developmental disability which was caused by some underlying medical condition or injury. In most cases, in fact, residents have both physical and developmental disabilities, and may have other related impairments, such as difficulties with speech. In any case, I am satisfied based on the evidence about the residents which is detailed above, that they can all be said to suffer from "physical or mental illnesses, disease or injury", or indeed are "chronically ill" as those terms appear in the HLDAA.

44. The employer's final argument related to the purpose of the HLDAA designation, which is, as noted by the Divisional Court in *Dignicare*, to ensure that persons who are afflicted with physical or mental disabilities, such that they are unable to care entirely for themselves, are not left without care in the event of a strike or lockout. Counsel submitted that the facts did not disclose that the clients in the residential care program are dependent on the services of the staff to this extent. With respect, I must disagree. Given the needs of the clients for support from staff in various aspects of living, including their personal care and medical needs, which are integral to their health, safety and general well-being, I am satisfied that a withdrawal of this care by their usual care-givers would have a negative impact on their conditions.

45. The employer argued further, however, that such a purposive interpretation of the HLDAA definition should now be modified in light of the addition of section 73.2 to the *Labour Relations Act*, which deals with specified replacement workers. One of the categories of employers which are permitted under this section to use specified replacement workers in the event of a strike or lockout are agencies providing "residential care for persons with behavioural or emotional problems or with a physical, mental or developmental handicap" (section 73.2(2)2). Counsel submitted that this modification of the Act had to be interpreted as a clear statement that agencies providing services of this nature are not intended to be included under HLDAA.

46. I cannot agree that these amendments can be taken as a clear statement about the application of HLDAA, given that corresponding amendments to the definition of HLDAA were not made at the same time. In any event, this interpretation of section 73.2 seems to misapprehend the fundamental nature of the replacement worker provisions in the amended Act. Prior to the passage of sections 73.1 and 73.2, an employer like George Jeffrey would presumably have had the unrestricted legal right to hire replacement workers in the event of a strike (although they may nonetheless have encountered difficulty finding qualified persons who were willing to cross the picket line). With the amendments made in 1993, employers are now generally prohibited from hiring replacement workers, with some exceptions, including those contained in the specified replace-



ment worker provisions in section 73.2 for employers providing certain “essential” services. Even under section 73.2, however, employers are limited in the extent to which they can use replacement workers. Thus, it is likely now *more*, rather than *less* difficult for an agency like George Jeffrey to use replacement workers in the event of a work stoppage. The amendments to the Act, then, have not lessened the threat posed by a strike or lockout to clients like those at George Jeffrey or their need for protection in such a situation.

47. The final aspect of the parties’ submissions to consider is their comments about the significance of the *Public Hospitals Act*. As noted above, George Jeffrey is included in Group K of Regulation 964 under that Act, which provides as follows:

1.-(1) Hospitals are classified as general hospitals, convalescent hospitals, hospitals for chronic patients, active treatment teaching psychiatric hospitals, active treatment hospitals for alcoholism and drug addiction and regional rehabilitation hospitals, and are graded as,

...

- (k) Group K hospitals, being separate organized facilities approved as such by the Minister, to provide local diagnostic and treatment services in a community or district to handicapped or disabled individuals requiring restorative and adjustive services in an integrated and coordinated program;

...

48. While this is not determinative of the question referred by the Minister, it does seem to confirm that George Jeffrey is the type of institution which would be likely to fall within the HLDA. In particular, it suggests that an argument could even be made that George Jeffrey is in fact a “hospital” rather than an “other institution” as those terms appear in section 1(1) of the HLDA, given its classification as such under the *Public Hospitals Act*. Neither the fact that there may be an intent on the part of the government to alter this classification at some point in the future, although the evidence on this point was not conclusive, nor the employer’s evidence about the purpose of the continued designation, can alter the fact that George Jeffrey has been for many years recognized legally as a hospital. It is not necessary for me to determine the question of whether or not George Jeffrey is a “hospital” as a result of its classification under the PHA, however, given my conclusions generally about the application of the definition of “other institution” in the circumstances of this case.

49. For all of the reasons set out above, therefore, it is the Board’s advice to the Minister that the employees of the residential care program of the George Jeffrey Children’s Treatment Centre are “hospital employees” within the meaning of the *Hospital Labour Disputes Arbitration Act*.

#### Non-residential Programs

50. The second question referred by the Minister is whether the whole of the George Jeffrey Children’s Treatment Centre should be so designated under the HLDA.

51. Having regard to the evidence concerning the programs offered by George Jeffrey other than the residential care program, and in particular the staff involved in this program delivery and the nature of their work, it appears that the institution as a whole might also be considered to meet the definition of “hospital” in the HLDA. The programs delivered by staff at Lillie Street and in schools generally involve assessment, treatment, prescription of assistive devices and counselling for children and adults with special needs, including physical and developmental disabilities. As such, it would appear to be an “other institution operated for the observation, care or treatment of

persons afflicted with or suffering from any physical or mental illness, disease or injury " or of "chronically ill persons".

52. Counsel for George Jeffrey submitted, however, that these aspects of the employer's operations do not meet the definition of a "hospital". He argued that the fact that the programs operated at Lillie Street were not residential in nature precluded a HLDAA designation. The requirement that the care, observation or treatment offered by an institution be residential in nature is not included in the definition in HLDAA, however, and for the reasons noted above I reject the notion that such a residential component must be "read in" to the definition given that the enumerated facilities are all residential in nature. It should be noted, in addition, that institutions such as hospitals routinely offer non-residential care and treatment, in many cases of the same sort as that offered by George Jeffrey at Lillie Street. In any event, I am not being asked to determine whether or not the non-residential programs, standing alone, meet the definition of "hospital" in HLDAA, but rather whether the institution as a whole should be so designated. Given the proportion of staff working in the residential care program, I am satisfied that it can be said that the institution as a whole has a substantial residential component.

53. It is also relevant to the second question that the designation of George Jeffrey as a "hospital" under Group K of Regulation 964 under the *Public Hospital Act* applies to the whole of the institution, rather than just the residential care program. This would seem to confirm the notion that hospital may have a non-residential component, and for the reasons set out in paragraphs 47 and 48 above also confirms generally the characterization of George Jeffrey as a "hospital".

54. The employer argued further that the programs offered by George Jeffrey at Lillie Street and in the schools were just that - "programs" - and could not be considered care, observation or treatment. I cannot accept this distinction: it seems to me clear that the assessment of clients with special needs requires observation, and that providing therapy of various sorts, including physiotherapy, occupational therapy, speech pathology treatment, and counselling, as well as the prescription of assistive devices, involves both care and treatment. Indeed, it is interesting, given the employer's focus on the lack of a medical quality to the care provided by the residential staff, that the care and treatment provided by the staff at Lillie Street is of such a medical nature.

55. Finally, George Jeffrey submitted that a purposive interpretation of the definition would not result in a HLDAA designation as there was no threat posed by a work stoppage to the clients of the programs at Lillie Street as they were not in residence. While I agree that the threat to non-residents is not as great as that posed to the clients of the residential care program, I do not accept that a work stoppage would have no impact. In fact, given the nature of the treatment being received, in most cases by children with special needs who would seem to be particularly vulnerable, I am satisfied that the withdrawal of their regular treatment might have seriously negative effects on their health and well-being.

56. For all of these reasons, therefore, it is the Board's advice to the Minister that the employees of the whole of the George Jeffrey Children's Treatment Centre are "hospital employees" within the meaning of the *Hospital Labour Disputes Arbitration Act*.

#### APPLICATION FOR COMBINATION

57. The employer has applied for combination of the two therapy bargaining units with the bargaining unit made up of residential staff. It takes the position that combination of the units would reduce fragmentation, enhance viable and stable bargaining, and would not cause serious labour relations problems.



58. The union opposed this application, asserting that serious labour relations problems would arise if the units were combined as requested. Its main argument, however, was based on the possibility of the Board combining the residential and therapy units in the event that only the residential unit was found to be made up of “hospital employees” within the meaning of the HLDAA. It did not seriously dispute that a combination would reduce fragmentation and enhance viable and stable bargaining, or assert that serious labour relations problems would result other than those associated with a bargaining unit made up in part of HLDAA designated employees.

59. Given our responses to the questions referred by the Minister, then, the problems identified by the union will not arise in the present case. As significant argument was made by both parties concerning the impact of a combination of HLDAA and non-HLDAA bargaining units, however, I will comment briefly on the issues which were presented.

60. The union identified a number of practical problems which would be faced by a bargaining unit made up of hospital and non-hospital employees. The first related to the access to the procedures set out in either the *Hospital Labour Disputes Arbitration Act* or the *Labour Relations Act* in the event of a breakdown in collective bargaining. As noted above, the HLDAA provides that once conciliation has been exhausted the collective agreement will be settled by arbitration. By contrast, non-hospital employees may strike or be locked out after a no-board report is issued, except in the case of a first contract where arbitration may be accessed as of right. It is unclear, then, how the collective agreement would be settled in these circumstances. Would the arbitrator have the power to settle terms relating to the employees on strike, and if not, how would he or she meet the mandate under sections 4 and 9 of the HLDAA that all matters in dispute between the parties, and in any event all matters necessary to be decided in order to conclude a collective agreement, are to be settled at arbitration? Similarly, it is not clear whether concessions extracted through economic sanctions undertaken by only a part of the bargaining unit could be applied to the remainder of the group at arbitration, for the reasons discussed below concerning the conduct of votes.

61. Once interest arbitration is completed, the requirements of the HLDAA might cause further problems for the parties. Section 10(5) requires the parties to execute a document giving effect to the decision of the arbitration board within five days after a decision has been received, and provides that this document then constitutes a collective agreement. Would this then become the collective agreement binding all of the employees, even those possibly on strike? There seems to be no way that the parties could avoid this outcome, given that section 10(7) provides that the decision of the board of arbitration becomes a collective agreement within the meaning of the *Labour Relations Act*, even if not executed by the parties. Sections 10(8), (9), (10), (11), (12) and (13) also provide for effective dates and terms of collective agreements settled by arbitration, which presumably might also be applied to the non-hospital employees.

62. A further practical problem relates to the conduct of strike and/or ratification votes. Section 74(5) of the Act provides that all employees in a bargaining unit shall be entitled to participate in a strike or ratification vote. This presumably means that hospital employees who would not be permitted to strike would nonetheless be entitled to vote on whether or not a strike should be undertaken, and also on whether or not an offer would be accepted. This could make it very difficult for a union to get adequate support for a strike, or conversely might mean that employees who would not suffer the repercussions of a strike could be decisive in a decision to walk out. Equally, it might be difficult to settle a strike if part of the unit wanted to take their chances with interest arbitration, which could lead to extremely long strikes given the normal pace of arbitration. Furthermore, this section has taken on new significance since the passage of section 73.1 of the Act, which prohibits the use of replacement workers. A condition of an application under section 73.1 is



that a strike vote be conducted pursuant to section 74(5), and that support be obtained from at least 60% of the employees in the bargaining unit. This means that employees who are not themselves striking may once again have a decisive impact on the way in which a strike will be conducted.

63. I have also considered other problems relating to the application of section 73.1 of the Act. The use of the term "bargaining unit" in this section makes it very difficult to predict who would be permitted to act as replacement workers in the event of a strike by a part of the bargaining unit, or indeed whether these sections of the Act could be applied at all. Section 73.1(3)(a) provides that a bargaining unit is considered to be locked-out if any employees in the bargaining unit are locked-out. Similarly, section 73.1(3)(b) says that a bargaining unit is considered to be on strike if any employees in the bargaining unit are on strike. The definition section establishes that the "place of operations in respect of which the strike or lock-out is taking place" includes any place where employees in the bargaining unit who are on strike or who are locked-out would ordinarily perform their work.

64. The problem created by these definitions in the context of a part-HLDAA unit is clear when one considers section 73.1(4) which provides as follows:

- (4) The employer shall not use the services of an employee in the bargaining unit that is on strike or is locked out.

This suggests that an employer with a bargaining unit split between HLDAA and non-HLDAA employees would in effect be prohibited from employing any members of that unit once any employees were on strike or locked out. At the same time, section 11(1) of the HLDAA provides that no hospital employees shall strike and no employer shall lock them out, despite anything contained in the *Labour Relations Act*. It is not clear, however, that the replacement worker provisions, which do not require these employees to strike but rather prohibit the employer from employing them, are in conflict so as to clearly resolve the question of how and if these employees may continue to work. A similar problem arises with section 73.1(7), which permits employees in the bargaining unit on strike to refuse to do any work at a place of operations in respect of which the strike or lock-out is taking place, which would include the part of the operations designated as a hospital under HLDAA. It may be that for some institutions employing HLDAA-designated employees these issues can be resolved by reference to section 73.2, which deals with specified replacement workers, but there still appears to be a difficulty in predicting clearly what impact a strike will have.

65. There are numerous other inconsistencies between the two Acts, including the provisions relating to open periods. What all of these potential problems point to is a significant lack of certainty in the relations between employer and bargaining agent, and even between the hospital and non-hospital employees, as to their rights and obligations under the two Acts during bargaining and in particular after a breakdown in bargaining. The union argued that problems of this sort would lead to disputes and litigation over the appropriate approach in the event that the parties were not able to agree quickly on a collective agreement covering both groups of employees, which would mitigate against viable and stable bargaining and against harmonious labour relations.

66. The Board has not yet dealt conclusively with the question of whether or not a combination of HLDAA and non-HLDAA bargaining units will be granted. The only reference so far in the growing caselaw on combinations is in the decision in *The Governing Council of the Salvation Army in Canada and Bermuda*, [1994] OLRB Rep. Jan. 85, at paragraphs 23 and 24:

...

23. The only troublesome aspect of the instant case is the plea that a part of the employer's organization *might* be found to be a "hospital" - as we understand it, because there is a consulting psychiatrist (not an employee) and the service of counsellors is directed to the clients' mental health.

24. However, as we understand it, there are no nurses involved, nor is it evident that the service involves the kind of medical care associated with what one usually considers to be a hospital. But the concern is, at present, entirely speculative, and even if one location were found to be a "hospital" within the meaning of the *HLDA*, it is not at all clear that the situation would be so legally or functionally different in this fragment of the employer's organization that it demands a separate bargaining unit. Municipalities provide a variety of counselling services, and large ones, like the Municipality of Metropolitan Toronto, have within their ranks, and within the same bargaining grouping, employees covered by the *HLDA*, and employees (the majority) who are not. We are not aware of any concrete collective bargaining problems arising from this mixing of employees - although, of course, the *HLDA* "employees" may not have the right to strike.

• • •

67. It is clear from these comments that the Board did not deal thoroughly with the possibility of a *HLDA* and non-*HLDA* combination, given that this prospect was not squarely before them. Certainly none of the arguments canvassed above seem to have been considered. It is also important to note that the situation in that case would have involved one small unit being carved out of a larger whole, creating, as the Board says in paragraph 24, a "fragment" of the employer's operation. Similarly, the example cited by the Board of a group of combined *HLDA* and non-*HLDA* employees is a large municipal unit, with only a minority of employees covered by the *HLDA*. It may be that in cases where the *HLDA* employees would make up only a small fragment of the bargaining unit some of the problems identified above would not arise, as the unit would be more clearly rooted in the regime under the *Labour Relations Act*. Where, as in the present case, however, the two groups of employees are relatively evenly matched, these problems may be more significant.

68. As noted in paragraphs 58 above, it is not necessary given my findings on the ministerial reference to deal conclusively with the question of whether or not the problems canvassed above may in fact be so significant as to fall within the notion of "serious labour relations problems" as that term appears in section 7 of the Act. This question, however, is one which will undoubtedly be given serious consideration by the Board in determining whether or not to combine *HLDA* and non-*HLDA* units into a single bargaining unit.

69. In the circumstances of this case, however, having regard to the criteria in section 7 of the Act, and in light of the finding that all of the employees in the three bargaining units are "hospital employees" within the meaning of the *HLDA*, the Board directs that the bargaining units in the application before us be combined into a single unit. I will remain seized with regard to any further remedial relief arising from the combination.

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**0548-94-R Local Union 47 Sheet Metal Workers' International Association, Applicant v. James Johnston Mechanical Contracting Ltd., Responding Party**

**Certification - Construction Industry - Reconsideration - Board certifying union in ICI and non-ICI bargaining units - Employer applying for reconsideration two weeks later on various grounds including its assertion that it had received an incomplete package of materials from the Board in connection with the union's application and that it had been misled as to its obligations by comments from a clerk at the Board - Application dismissed**

**BEFORE:** *Lee Shouldice*, Vice-Chair, and Board Members *F. B. Reaume* and *G. McMenemy*.

**APPEARANCES:** *David Jewitt* and *Ross Mitchell* for the applicant; *Susan Nicholas* for the responding party.

**DECISION OF LEE SHOULDICE, VICE-CHAIR, AND BOARD MEMBER G. McMENEMY; December 20, 1994**

1. This is an application for certification. By way of decision dated June 6, 1994, this panel of the Board certified the applicant as the bargaining agent for all journeymen and apprentice sheet metal workers in the employ of the responding party in the I.C.I. sector of the construction industry, and all journeymen and apprentice sheet metal workers in the employ of the responding party in all other sectors in the Regional Municipality of Ottawa-Carleton, and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman. On June 22, 1994, the Board received correspondence from counsel for the responding party (hereinafter sometimes referred to as "the employer") in which the Board was asked to reconsider its earlier decision. As a result of the nature of the grounds upon which reconsideration was requested, and the particular circumstances of the case, the Board listed this matter for hearing for September 15, 1994.

2. When this matter came on for hearing on September 15, 1994, the Board asked counsel for the responding party to advise the Board of the responding party's best expected evidence. It appeared, based on the materials before the Board, including correspondence from applicant's counsel dated September 14, 1994, that the calling of evidence would easily take more than the one day of hearing then scheduled, and would involve lengthy argument on one or more motions relating to the proper scope of the evidence which could be adduced before us. In light of the general principles applied by the Board to the exercise of its discretion to reconsider its decisions (see, for example, *John Entwistle Construction Limited* [1979] OLRB Rep. Nov. 1096 and *K-Mart Canada Limited (Peterborough)* [1981] OLRB Rep. Feb. 185), the Board felt that to entertain the request of the responding party on its "best case scenario" could streamline the proceedings. We advised counsel that, should the Board determine that the "best case" scenario of the responding party could warrant reconsideration of its earlier decision, further hearing dates would be convened to deal with the applicant's preliminary motions, to hear the evidence of the parties and to provide an opportunity for opposing counsel to challenge the evidence then offered. For the purposes of this decision, therefore, we were provided with the following information which counsel for the employer advised would be expected to be elicited from the responding party's witnesses.

3. On May 18, 1994, the responding party received the applicant's application for certification in a package of material which had been couriered from the Board on May 17, 1994. This package contained, in addition to the application for certification, a "Notice of Application for Certification, Construction Industry" (Form B-40), two Notices to Employees of Application for



Certification, Construction Industry, one in French and one in English (Form B-43), and a Return of Posting (Form B-48). The envelope did not contain a Response Form or a Schedule which the Board typically includes in the package. We note here that the application for certification had been filed with the Board on May 12, 1994. The bargaining unit applied for by the applicant was described in the application thusly:

“All journeymen Sheet Metal Workers and registered apprentices employed by the respondent [sic] in the industrial, commercial and institutional sector, in the Province of Ontario, save and except non working foremen and persons above the rank of non working foremen [sic].

All journeymen sheet Metal Workers and registered Sheet Metal apprentices employed in board area #15, save and except non working foremen and [sic] persons above the rank of non-working foremen and persons employed in the I.C.I. sector”

On the face of the application, the applicant identified “the site or sites of the jobs at which the work ... is being performed” as “Ikea store addition and renovation at Pinecrest Shopping Mall ... Ottawa”.

4. Due to the absence of the President of the employer, Mr. James Johnston, the package from the Board remained unopened until the morning of Friday, May 20, 1994, at which time Mr. Johnston opened the package, reviewed its contents, including the Notice of Application for Certification, and posted the English copy of the Notice to Employees in his Downsview, Ontario shop. The French version of the Notice was sent to Ottawa over the weekend for posting at the one site identified on the application form as the site where work was being performed, that being the Ikea Store at the Pinecrest Mall in Ottawa, Ontario. As it turned out, work at that site had, by May 20, 1994, been completed by the responding party. In fact, the two employees of the responding party who had been working at that site were laid off on May 12, 1994, at 12 noon, the same date that the application for certification had been filed with the Board. It was Mr. Johnston's belief that because this project had ended the application would be unsuccessful. It should be noted here that prior to this application the employer operated as a non-union mechanical contractor, but counsel did not dispute that the employer was aware of the existence of the applicant.

5. The responding party's Vice-President, Elizabeth Bettles, made a telephone call to the employer's legal counsel on May 20, 1994, once she became aware of the application for certification. She was advised by counsel that no one in its offices was familiar with the Board's practices and counsel indicated to her that it would locate someone it could recommend to her for advice. The responding party's counsel did not call back with the name of a lawyer before close of business on May 20, 1994. As May 23, 1994 was a holiday in Ontario, the next business day was Tuesday, May 24, 1994. The terminal date set by the Board for the filing of a response and supporting documentation was Wednesday, May 25, 1994. (Although there was some suggestion made in counsel's letter of June 22, 1994 that the opportunity to respond to the application was quite short, we note that the employer was in possession of the application for an entire week before the terminal date, which is, in our view, more than sufficient time to respond to an application for certification, even when a statutory holiday intervenes during that week. It is apparent that the delay in opening the package once it arrived at the employer's premises made it more difficult to respond in a timely way and to obtain legal counsel in a timely fashion. The recipients of correspondence from the Board are responsible for opening it in a timely fashion and cannot rely on a delay in doing so to support an argument that they were not given a sufficient opportunity to respond).

6. On Tuesday, May 24, 1994, a Board clerk telephoned the office of the responding party and left a message for someone to return her call. This call was to ensure that the responding party had posted the Notice to Employees and returned to the Board the Notice of Posting form. Ultimately, Mr. Johnston returned the telephone call at 9:50 a.m. that same day as Ms. Bettles was

absent from the office due to illness. Mr. Johnston tried to explain to the clerk that the job at the Ikea store in Ottawa had been completed. He was told to put the explanation on the Return of Posting Form and return it to the Board. Mr. Johnston's note of the conversation was recorded immediately after the telephone call and provides as follows:

Called asked if we had posted the form B-43 at Ikea in Ottawa, and would we fax a copy of form B48.

I stated that the men in Ottawa was layed of [sic] on May the 12 because the job was completed and that was the same day they filed.

She said to note this on form B48 and that would be the end of it.

As a result of this telephone call, Mr. Johnston believed that he had been advised by "the Board" that his responsibility for responding to the application for certification would be at an end upon his returning the Notice of Posting (Form B-48) to the Board. This he did by way of facsimile on that same date. On the bottom of the form sent to the Board Mr. Johnston typed the following note:

This job is a construction site, the Sheet Metal Work referred to in this application is completed, the 2 employees mentioned in Paragraph 8 on form A-65 was [sic] given their proper notice of lay off on May 9th, 1994 and their job was completed on noon May 12th, 1994.

We were not aware of this application until we received it from your office on May 18th, 1994.

If this is to proceed any further we request more time than May 25th, 1994 in order to find out what our rights as a [sic] employer is.

7. As noted earlier, the terminal date for this application for certification was May 25, 1994. On June 1, 1994 the Board file was forwarded to the Vice-Chair of this panel for disposition. On June 2, 1994, Ms. Bettles contacted the Board to enquire as to when the employer would receive confirmation that the application was to be discontinued. She had been assured by Mr. Johnston that everything had been dealt with but was unsure of that fact. Ms. Bettles was advised that the file was before the Board for determination. She was unsure of what that meant but took no further steps to contact counsel. On or about June 6, 1994, the decision certifying the applicant referred to above was issued by this panel. The decision was forwarded to the parties by the Registrar by way of letter dated June 13, 1994, and was received by the responding party on June 16, 1994. Counsel for the responding party wrote to the Board asking for reconsideration of the decision by way of letter dated June 22, 1994.

8. Counsel advised the Board that, as at May 12, 1994, the employer had two sheet metal workers working in Ottawa *and* five other sheet metal workers performing I.C.I. work in the southern Ontario area, all of which were either journeymen or apprentice sheet metal workers.

9. Counsel for the responding party submitted a number of grounds upon which she urged that the Board reconsider its decision. In essence, they are the following:

- (a) the lack of a Response form and a Schedule in the package of materials forwarded to the employer by the Board caused the employer some confusion as it was unaware of the nature of the Response to be filed and the information that was required to be filed with the Board prior to the terminal date. Counsel notes that the Board's June 6, 1994 decision "relies on" the failure of the employer to file a Response and a Schedule of employees.

- (b) the comment by the Board clerk to the effect that all Mr. Johnston had to do was to return the Notice of Posting lulled Mr. Johnston into believing that there was no need to do anything else to protect the position of the employer;
- (c) the Board did not pay heed to or respond to Mr. Johnston's request for extra time to respond, and because of the short time for response ought to have done so;
- (d) the Board ignored or did not consider or address information provided by Mr. Johnston in the note contained on the Return of Posting; and
- (e) the five employees of the responding party working in Southern Ontario are now unionized notwithstanding that the application would have been dismissed had the responding party filed a Response, having regard to the number of cards filed by the applicant and the type of work being performed by these employees on May 12, 1994, the date of application.

We will consider each of these grounds for reconsideration below.

10. Section 108(1) of the Act, which provides the Board with the authority to reconsider its decisions, states as follows:

**108.-(1)** The Board has exclusive jurisdiction to exercise the powers conferred upon it by or under this Act and to determine all questions of fact or law that arise in any matter before it, and the action or decision of the Board thereon is final and conclusive for all purposes, but nevertheless the Board may at any time, if it considers it advisable to do so, reconsider any decision, order, direction, declaration or ruling made by it and vary or revoke any such decision, order, direction, declaration or ruling.

As has been referred to above, the Board's general approach to the reconsideration of its decisions has been clearly enunciated in cases such as *John Entwistle Construction Limited*, *supra* and *K Mart Canada Limited (Peterborough)*, *supra*. Recently, in *John Maggio Excavating Limited* [1994] OLRB Rep. Jan. 31, the Board's policy was reiterated:

As a general proposition, the Board will not reconsider a decision unless a party intends to introduce new relevant evidence which could not have been previously obtained by the use of reasonable diligence, and where such evidence, if adduced, would be practically conclusive of the case. Alternatively, the Board may reconsider its previous decision if a party intends to raise objections or make representations which were not already considered by the Board and which the party had no prior opportunity to raise. The rationale for the narrow limits imposed on the exercise of the Board's power to reconsider its earlier decisions is obvious - only if Board decisions are considered to be final can they be relied upon as establishing the rights as between the parties.

This general rule is not one which is "cast in stone". However, for the reasons referred to in the excerpt from *John Maggio Excavating Ltd.*, *supra*, (and numerous other decisions) it will be observed by the Board in most cases. One concept which is central to the exercise of the Board's reconsideration power is that of "reasonable diligence". The evidence desired to be introduced by the party seeking reconsideration must be evidence which could not have been previously obtained by the use of such reasonable diligence. Furthermore, objections or representations to be raised can only be raised if the Board has not previously considered the objection or representation *and*



the party had no prior opportunity to raise it. In light of these general principles, we consider the grounds raised by the employer for the reconsideration of our prior decision.

(a) Incomplete Package of Materials

11. For the purposes of this decision, we will assume as a fact that the responding party did not receive the blank Response form and Schedule which are typically provided in the package forwarded by the Board to the employer in an application for certification. It is probably not unfair to say that someone reviewing such an incomplete package may well be slightly confused by the lack of a document on which to respond to the application. However, the "Notice of Application for Certification, Construction Industry" which was specifically directed to the employer (and which Mr. Johnston conceded that he read) provides as follows:

5. If you wish to participate in this case, you must file with the Board your response as well as the material listed below so that it is received by the Board **not later** than the terminal date shown in paragraph 4 or, if it is mailed by **registered mail** (including Priority Post) addressed to the Board at its office, 4th Floor, 400 University Avenue, Toronto, Ontario, M7A 1V4, it is mailed **not later** than the terminal date shown in paragraph 4:
  - (a) schedules of employees in alphabetical order in the form set by the Board;
  - (b) a declaration verifying the schedules in the form set by the Board;
  - (c) sample employee signatures from existing employee records, arranged in alphabetical order.

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IMPORTANT NOTES

...

**IF YOU DO NOT FILE YOUR RESPONSE AND OTHER REQUIRED DOCUMENTATION IN THE WAY REQUIRED BY THE RULES, THE BOARD MAY NOT PROCESS YOUR RESPONSE AND DOCUMENTS, AND MAY DECIDE THE APPLICATION WITHOUT FURTHER NOTICE TO YOU. FURTHERMORE, YOU MAY BE DEEMED TO HAVE ACCEPTED ALL OF THE FACTS STATED IN THE APPLICATION.**

**THE BOARD'S RULES OF PROCEDURE DESCRIBE HOW A RESPONSE MUST BE FILED WITH THE BOARD, WHAT INFORMATION MUST BE PROVIDED AND THE TIME LIMITS THAT APPLY.**

**PLEASE CONSULT THE BOARD'S RULES OF PROCEDURE BEFORE COMPLETING YOUR RESPONSE. COPIES OF THE BOARD'S RULES MAY BE OBTAINED FROM THE BOARD'S OFFICE LOCATED ON THE 4TH FLOOR AT 400 UNIVERSITY AVENUE, TORONTO, ONTARIO (TEL. (416) 326-7500).**

12. The assumed fact that the Board's Response form and the Schedule to the Response were not included in the package forwarded to the responding party does not satisfy the test enunciated above. It was not disputed that on May 20, 1994 Mr. Johnston read the documents that were contained in the package delivered by the Board. A simple reading of the Notice of Application for Certification, Construction Industry would make any reasonable person question whether certain documents were missing from the package. Numerous references are made in that document to the "response" expected from the employer and simple instructions are provided should the reader require a copy of the Board's Rules of Procedure. The reader is directed to consult the Board's Rules of Procedure (which can be obtained by calling the Board's telephone number listed

on the document) before completing a Response. Mr. Johnston, having reviewed the package, should have, if confused, called the Board for assistance to obtain a copy of the Rules of Procedure and the Response form and Schedule. He did not do so on the Friday that he reviewed the forms in the package sent to him. The employer obviously was aware of the significance of the package, in light of its immediate posting of the Notice to Employees and the telephone call to its legal counsel. By not contacting the Board concerning the missing forms Mr. Johnston failed to exercise reasonable diligence to enable the employer to file a Response with the Board in a timely manner, and the Board will not reconsider its earlier decision as a result of these circumstances.

(b) Comment by Board Clerk

13. The comment which we have assumed was made by a Board clerk to Mr. Johnston does not, in our view, lead to the conclusion that we should reconsider our decision. Once again, we are willing to assume, for the purposes of this decision, that Mr. Johnston's note was made contemporaneously and reflects the exact comments made by the Board's clerk. We do not think that a reasonable person would have relied on those comments in light of the clear and unambiguous warnings on the Notice of Application for Certification, Construction Industry. As noted above, Mr. Johnston clearly realized that this application was significant to his business operation - upon reviewing the documents forwarded to his office by the Board, he posted the Notices to Employees and his Vice-President contacted the employer's lawyers. The form which he reviewed was clear - should he fail to file a Response and the other documents required "... the Board ... may decide the application without further notice to you. Furthermore, you may be deemed to have accepted all of the facts stated in the application". The Notice of Application for Certification is signed by the Registrar of the Board and is unambiguous.

14. In our view, an employer faced with comments made by a Board clerk which he interprets as contrary to the unambiguous written directions of the Registrar of the Board would, acting reasonably, call the Registrar or the Board's legal counsel to clarify the contradictory information. Mr. Johnston accepted the clerk's "advice" in its entirety and we question whether, perhaps, some degree of wilful blindness was involved. The comments made by the clerk are hardly unambiguous and there was no suggestion that Mr. Johnston was otherwise in the process of preparing a response to the application or actively seeking legal advice prior to his conversation with the Board clerk. In our view, Mr. Johnston did not exercise reasonable diligence when he relied on the comments assumed to have been made by a Board clerk and accordingly such reliance does not justify the reconsideration of our prior decision.

(c) Comment Regarding Extension of Date to Respond

15. With respect to Mr. Johnston's comment regarding his need for further time, there can be no doubt that Mr. Johnston's note on the Return of Posting form may, if read one way, suggest that he felt that he needed further time than that provided by the Board to respond to the application. It can also be read to refer to the need for further time should a hearing be scheduled.

16. As noted above, however, this application was referred to the Vice-Chair of this panel for review and determination with the Board Members of this panel on June 1, 1994 - one week after the terminal date. This is typically the case in the construction industry where the Board is not required by the Act to hold oral hearings. The Board's decision was made on June 6, 1994 - almost 2 full weeks after the terminal date, and almost three full weeks after the employer first received the application. Assuming, for the purposes of argument, that the employer was requesting an extension of the terminal date, there was absolutely no indication on the document to suggest *why* such an extension was required. In light of the clear warnings on the Notice of Application for Certification, Construction Industry, and the late date at which the request was made, in

our view it was unreasonable for the employer to assume that a bald request for an extension of the terminal date would be satisfactory to obtain the extension. In our view, a person using reasonable diligence would have contacted the Board's Registrar. These circumstances do not warrant reconsideration of our previous decision.

(d) Consideration of Information Provided

17. The responding party also states that the Board did not consider or address the information provided by Mr. Johnston on the note attached to the Return of Posting Form. In point of fact, the information confirmed to the Board that the application should be successful. In the note, Mr. Johnston confirms the following:

- (1) the employees in Ottawa were engaged on a construction project;
- (2) the work performed was sheet metal work;
- (3) there were two employees at the site (as stated in the application);  
and
- (4) the two employees were at work on May 12, 1994, the date of application, and spent the majority of their working day performing sheet metal work.

All of this information was considered by the Board in making its decision. This ground of complaint does not warrant the reconsideration of our earlier decision.

(e) Southern Ontario Employees

18. The last ground urged as supporting the request that we reconsider our prior decision is that the employer also employed five individuals in the Toronto area, which employees were not approached by the applicant, but who were performing sheet metal work in the I.C.I. sector of the construction industry on the date of application. If the employer had responded to the application, and if, in fact, these five employees would properly have been included on the Schedule used for the purpose of determining the count, it is evident that the application for certification would have been unsuccessful. Counsel for the responding party submits that this result should cause the Board to reconsider its decision, as it clearly constitutes a windfall for the applicant and "sweeps in" five people who have not shown any desire to be represented by the applicant.

19. Without a doubt, this applicant has, if the evidence of the responding party ultimately established the "best case" scenario provided to the Board, obtained a certificate when it otherwise would have been unsuccessful in doing so. We do not, however, believe that it is appropriate to reconsider our decision solely on that basis, as we are of the view that it was evident from the application and from Mr. Johnston's conduct that Mr. Johnston was aware that the employees at the employer's Downsview shop would be captured by any certificate obtained by the applicant. As noted earlier, the application filed by the union was for a "standard" I.C.I. unit of sheet metal workers:

All journeymen Sheet Metal Workers and registered apprentices employed by the respondent [sic] in the industrial, commercial and institutional sector, in the Province of Ontario, save and except non-working foremen [sic] and persons above the rank of non-working foremen.

All journeymen Sheet Metal Workers and registered Sheet Metal apprentices employed in Board Area #15, save and except non-working foremen and persons above the rank of non-working foremen [sic] and persons employed in the I.C.I. sector.



This application clearly identifies as part of the bargaining unit appropriate for collective bargaining all journeymen sheet metal workers and registered apprentices in the I.C.I. sector *in the Province of Ontario*. It would appear that Mr. Johnston was aware that his shop employees were affected by this application, as is evident from his immediate posting of the “Notice to Employees of Application for Certification” in the Downsview area shop. The Notice of Posting form, signed by Mr. Johnston, declares that “I posted all of the notices in the work place where they are most likely to come to the attention of all employees who may be affected by the application”. In this light, it is hard to accept, at this late date, that it was *not* known to Mr. Johnston that his Downsview area employees were subject to and affected by this application for certification.

20. In essence, all of the information necessary for Mr. Johnston to determine the full extent of the scope of this application was in his possession as at May 18, 1994. The scope of the unit desired by the applicant was unambiguous and could hardly have been lost on Mr. Johnston, who has operated his business for approximately 15 years. Mr. Johnston determined that he would not file a Response with the Board as required. The consequences of doing so, admittedly severe from his perspective in the circumstances of this case, were caused directly by his own conduct.

21. Accordingly, we decline to reconsider our decision of June 6, 1994.

**DECISION OF BOARD MEMBER F. B. REAUME; December 20, 1994**

1. I respectfully dissent on the majority decision not to reconsider its earlier decision.

2. Personally, I submit that the panel failed to note that the application was from a different geographical Board area than that of the employer’s home base of operations which certainly would have raised concern about the possibility of a representation problem, and had it checked out by a Board Officer.

3. Even if we decide that the employer did not, without cause, exercise reasonable diligence in this matter, *which I most emphatically do not*, we simply cannot rationalize the representational problem in this application on the basis of the *action or inaction of the employer*. By doing so, we simply allow the union to “luck out” on the application rather than show true majority support for the application by the employees so affected. In other words, the action or inaction of the employer cannot be allowed to override the true representational wishes of the majority of affected employees.

4. For all the above reasons, while noting the offer of the union to accept all the affected employees into membership to preserve their employment opportunity with this employer, I would support a reconsideration.

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**1191-94-U Office and Professional Employees' International Union, Local 343, Applicant v. Ombudsman Ontario, Responding Party**

**Discharge - Just Cause - Unfair Labour Practice - Board finding that some discipline warranted for employee's carelessness, but that other allegations not made out on the evidence - Employer found to have disciplined and discharged employee without just cause contrary to section 81.2 of the Act - Written warning substituted for discharge and for various other disciplinary notations - Reinstatement with compensation ordered - Application allowed**

**BEFORE:** *Roman Stoykewych*, Vice-Chair, and Board Members *W. H. Wightman* and *H. Peacock*.

**APPEARANCES:** *M. I. Rotman*, *Carol Dupuis*, *Lorraine Boucher* and *Dean Morra* for the applicant; *Walter Thornton*, *LaVerne Monette* and *Lee Anderson* for the responding party.

**DECISION OF THE BOARD;** December 21, 1994

1. This is an application pursuant to the provisions of section 91 of the *Labour Relations Act*, in which the applicant trade union asserts that the responding party employer has violated section 81.2 of the Act. In particular, it is alleged that the employer's dismissal of Dean Morra on June 28, 1994 was without just cause.

2. The employer, the Ombudsman of Ontario, conducts its operations out of nine District Offices throughout Ontario as well as in its main office in Toronto. In a decision of the Board dated February 5, 1993 [reported at [1993] OLRB Rep. Feb. 147], the applicant trade union was certified as the bargaining agent for the employees of the Ombudsman of Ontario. As of the time of the events giving rise to this application, the parties had not yet entered into a first collective agreement.

3. At the time of his discharge, Mr. Morra had been employed at the Ombudsman's Toronto offices for over five years. Until the events giving rise to this application, he had worked in a series of increasingly responsible word processing positions. The evidence is undisputed that he performed satisfactorily in those positions, and there was no suggestion that he had engaged in conduct attracting discipline during this time. In late November, 1993, Mr. Morra was promoted to an Administrative/ Production Secretary position, which he had obtained by virtue of his successful candidacy in a competition. The position, although involving a considerable clerical component, was in substantial measure that of an "administrative assistant" to Ms. Linda Robinson, the Director of Communications at the Ombudsman's Office. On May 26, 1994, Mr. Morra received a written warning with respect to his work performance. On June 28, 1994, Mr. Morra was terminated from that position for reasons related to his performance.

4. It was the thrust of the employer's position that Mr. Morra had failed to perform adequately in this position and, in argument, claimed that his conduct in this respect was the proper subject matter of discipline, including discharge. To support this position, the employer referred us to a series of incidents involving Mr. Morra which, in its view, supported the conclusion that the discharge was for just cause. Before turning to the evidence, it is useful to review the statutory provisions under which the trade union seeks relief for Mr. Morra.

## I

5. Section 81.2 of the Act, which came into effect as of January 1, 1993 as part of the recent package of legislative amendments, provides as follows:

**81.2-(1)** No employer, employers' organization or person acting on behalf of either shall discharge or discipline an employee without just cause if,

- (a) a trade union is certified as the employee's bargaining agent or the employer has voluntarily recognized the trade union as the employee's bargaining agent; and
- (b) no first collective agreement has been settled.

**(1.1)** If the Board determines that an employer has imposed a penalty on an employee for cause, the Board may substitute such lesser penalty as it considers just and reasonable in all the circumstances.

6. The Act now provides that in circumstances, such as the present ones, where a trade union has obtained bargaining rights by way of certification but has yet to conclude with the employer a first collective agreement, the employees for whom the trade union holds bargaining rights are accorded "just cause" protection with respect to discharge and disciplinary sanctions imposed by the employer. As a result, even in the absence of any allegation that the employer had otherwise violated the Act, the Board is now empowered to adjudicate upon such issues and, in the event that a violation of the provision is found, to fashion a remedy as is provided for in the remedial provisions of section 91 of the Act. The effect of the amendment, then, is to impose on the employer an enforceable standard for its discipline and discharge that had previously flowed from obligations pursuant to collective agreements. In this respect, it is notable that the statutory language imposing the just cause requirement in section 81.2 is substantially identical to that found in section 43.1(1), which deems every collective agreement to provide that "no employee shall be discharged or disciplined without just cause".

7. Because of the similarity of the statutory language and because the circumstances in which the Board will have to adjudicate upon the just cause question will in many cases closely resemble those of the arbitration of grievances pursuant to a collective agreement, the arbitration process is an obvious analogue to the Board's role contemplated under section 81.2. We are, in this respect, confident that it was the Legislature's intention for the Board to seek guidance from what has been referred to as the "common law of the shop" in the course of our determinations pursuant to this section, and that the caselaw developed in the context of the arbitration of discipline and discharge grievances will be of considerable assistance to the Board. (See, for example, *The Brick*, [1993] OLRB Rep. Nov. 1206, where the applicability of the doctrine of "culminating incident" was considered.) In particular, we are of the view that in duplicating the language deemed to be contained in collective agreements, the Legislature directed the Board's attention to the standards articulated in the arbitral caselaw regarding just cause, rather than to the common law standard of "cause". We note in this respect the comments of George Adams (now Mr. Justice Adams), sitting as a statutory arbitrator in *Re Roberts and the Bank of Nova Scotia* (1979), 1 L.A.C. (3d) 259, (Adams), in which this question was discussed in the context of the arbitration provisions for non-unionized employees under the *Canada Labour Code*:

I am of the view that when Parliament used the notion of "unjustness" in framing s. 61.5, it had in mind the right that most organized employees have under collective agreements - the right to be dismissed only for "just cause". I am of this view because the common law standard is simply "cause" for dismissal whereas "unjust" denotes a much more qualitative approach to dismissal cases. Indeed, in the context of modern labour relations, the term has a well understood content

- a common law of the shop if you will: see Cox, "Reflections on Labour Arbitration", 72 Harv. L. Rev. (1958) at p. 1492.



8. We are in respectful agreement with the conclusion drawn in *Re Roberts, supra*, and find the considerations expressed in that decision to be germane to our inquiries under section 81.2. Indeed, given the Ontario provision's greater similarity to the language of collective agreements, and its function within the collective bargaining regime, we find the link to the arbitration process to be even more compelling.

9. Of course, the Board must be sensitive to the differences between circumstances where there is an established collective bargaining relationship anchored in the provisions of a collective agreement and those in which the only rights that the trade union may assert *vis a vis* the employer are statutory ones. The Board is conscious of the fact that arbitrable rights other than the just cause standard (in particular, ones relating to the grievance procedure) are factors considered by arbitrators in their awards and that, in the context of proceedings under section 81.2, there are no such contractual rights upon which the trade union may rely. Another potential difference lies in the differing scope of remedial authority: the Board has at its disposal a substantially broader range of remedial powers than does a board of arbitration constituted under a collective agreement and therefore, the steps the Board may take to rectify a breach of the just cause requirement may in certain circumstances differ from the remedial response of an arbitrator. Nevertheless, in our view, both the statutory and practical similarities far outweigh the differences, and, provided that those dissimilarities are kept in mind, we are persuaded that the decisions of arbitrators are a valuable resource to the Board in the course of its determinations pursuant to section 81.2.

10. The present case raises the question of the appropriateness of disciplinary responses to poor work performance by an employee. It was the general thrust of the trade union's position that discipline for such matters would be effecting punishment for matters that are outside of the control of the employee and hence, fundamentally unfair. We cannot agree. While it is true that at least some of the allegations of poor performance initially advanced by the employer in these proceedings could not be reasonably attributed to culpable action by Mr. Morra, that cannot be said of the allegations of misconduct upon which the employer expressly relied. With few exceptions, the allegations upon which the employer bases its case for discipline consist of incidents of carelessness, failure to follow instructions, and lack of effort. To be sure, careless performance of work rests on the frontier of what is generally considered culpable. At the same time, speaking more practically, it cannot be said that such matters are not amenable to corrective action by the employer, nor is it appropriate for the employer to be left without recourse in the face of demonstrated negligence. For these reasons, arbitrators have long recognized the appropriateness of a disciplinary response to poor work performance provided that the discipline is aimed at behaviour that can be corrected by the employee. (E.g., *Re Steel Co. of Canada Ltd.* (1971), 23 L.A.C. 221 (Rayner); see also *The Brick, supra*.) Indeed, in his submissions, counsel for the employer carefully distinguished between those matters that were attributable to the culpable action of Mr. Morra and sought to rely only upon such allegations. Accordingly, we see no reason why the employer should not be permitted to rely upon such incidents as the basis for discipline.

11. A further issue raised in the present application is the applicability of the arbitral doctrine of "progressive discipline" to the question of just cause under section 81.2. That doctrine, rooted in the recognition of the rehabilitative potential of the employment relationship and the corrective approach to industrial punishment, requires that an employer must establish that an employee's conduct will not be responsive to lesser penalties before resorting to discharge. In operational terms, by progressively increasing the severity of the discipline imposed for misconduct, it is expected that an employee will be given some inducement and incentive to reform the conduct complained of as well as providing a "record" upon which the employer may base the decision to

discharge an employee (Brown and Beatty, *Labour Arbitration in Canada* (3d), Toronto: Canada Law Book, para. 7:4422).

12. The nature and applicability of the doctrine of progressive discipline to the adjudication of the just cause issue in a non-collective agreement environment were extensively reviewed in *Re Roberts*, *supra* pp. 265-67 and it is unnecessary to recapitulate them here. It is sufficient to note that we are in agreement that the concept is inextricably intertwined with the “just cause” standard. For that reason, this panel is persuaded that the doctrine of progressive discipline is applicable to the Board’s determinations under section 81.2 and furthermore, sees no reason why the employer, in the present circumstances, should not be required to establish that penalties short of discharge would either not correct the behaviour complained of or would be otherwise inappropriate. Indeed, counsel for the employer did not strenuously argue against the general applicability of such a requirement but instead, submitted that the evidence established that it had been met.

## II

13. At the hearing, the employer relied upon a previous warning to support the discharge penalty. That warning, delivered to Mr. Morra by Ms. Robinson on May 26, 1994, consisted of a catalogue of complaints with respect to his performance (only some of which were relied upon at the hearing) coupled with a warning that discharge would ensue by June 30, 1994 if Mr. Morra did not demonstrate significant improvement in his performance. Since the trade union and Mr. Morra assert that this “last chance” disciplinary sanction was also issued without just cause, it is useful to review the circumstances pertaining up to that time.

14. Although he was put into the Administrative/Production Secretary position in late November, 1993, it appears that Mr. Morra did not assume his full duties until some time in late January, 1994. In the meantime, he continued to perform various long-term projects that had previously been assigned to him in his word processing capacity. The formal training that he received during this early period of his tenure in the administrative secretary position was restricted to a course for upgrading his word processing skills, which he attended in January. Otherwise, his early training consisted of ad hoc meetings with Ms. Robinson who, it should be noted, had commenced her employment with the Ombudsman at almost the same time as Mr. Morra took on the Administrative/Production Secretary position.

15. Mr. Morra received his first written assessment on February 17, 1994. The review of his performance was generally positive, noting his service orientation in a favourable light. However, Ms. Robinson indicated her concerns with his apparent weakness in prioritizing assignments and, more specifically, his inability to turn down work that was directed to him. In the evaluation, Mr. Morra was encouraged to “say No’ to some requests”. Shortly after the evaluation, it was arranged that Mr. Morra and Ms. Robinson were to meet on a more formalized weekly basis to discuss the priorities of the Communications Department, and to deal with any work-related problems. It is also at this time that Ms. Robinson concluded that Mr. Morra constituted a potential performance problem and began to take note of what she perceived to be deficiencies in his performance.

16. The misconduct expressly relied upon by the employer included four incidents which occurred in mid-March, 1994. On March 11, 1994, Mr. Morra was asked by Ms. Robinson to photocopy a copy of the Ombudsman’s “Draft Annual Report” in order that she might have it for a meeting with its publisher at one o’clock the next day. The request was clear and unequivocal, and there is no question that Mr. Morra received the request. However, it appears that Mr. Morra, while busy with his other work, neglected to turn his mind to the matter until Ms. Robinson reminded him to do so shortly before the meeting. As a result, the photocopied Report was provided to Ms. Robinson ten minutes late, while the meeting was already in progress. Similarly, on



March 17, Mr. Morra failed to provide Ms. Robinson with copies of certain videotapes from the resource library in a timely manner, despite being requested to do so in a clear and unequivocal manner.

17. In both these cases, it is clear that Mr. Morra failed adequately to take note of the requests, which contributed significantly to his forgetting to do them as required. It is to be noted, moreover, that Mr. Morra had been told on several occasions to make note of his assignments in a “day-timer” Ms. Robinson had provided him for precisely this purpose. It would appear that Mr. Morra ignored these directions, and instead, preferred to keep track of his assignments with a system of handwritten lists and computer notations that, quite manifestly, did not accomplish its intended purpose.

18. The employer also relied upon an incident on March 14, 1994, in which Mr. Morra is alleged to have misplaced an address directory entitled the “Blue Book”. As part of his duties, Mr. Morra is required to keep various resource materials, including the “Blue Book”, in a manner that is accessible to other staff, including Ms. Robinson. That these materials be organized in a such a way that staff can use the resources without Mr. Morra’s assistance is particularly important given that Mr. Morra’s schedule permits him to be absent from the workplace for one working day during the week. The evidence is clear that on March 14, 1994, which was Mr. Morra’s day off, Ms. Robinson was unable to find the Blue Book after looking for it in its designated location. She received it only the next day, after Mr. Morra had conducted a search of the office.

19. Finally, the employer relied upon another incident of failing to record assignments which, although occurring in mid-March, came to light only on June 20, 1994. Mr. Morra is alleged to have failed to have taken adequate steps to ensure that a shipment of materials reach its destination. In mid-March, 1994, Mr. Morra was requested by Ms. Robinson to ensure that certain display materials were sent to the Ombudsman’s London offices by June 16, several days before they were necessary. It appears that, once again Mr. Morra neglected to make the necessary notation in his day-timer or in any other tickling devices he had in operation at the time, and that as a result, the deadline came and passed without the necessary shipment being made. Furthermore, it appears that, despite being requested to do so, Mr. Morra did not ensure that the materials in question were properly assembled. As a result, when Ms. Robinson succeeded in having them shipped to London on an express basis, they were not in a condition to be of any use to the personnel in the London office.

20. The basic thrust of the trade union’s defense to the incidents of careless work performance was two-fold. First, it was argued, the employer should not be permitted to rely upon the incidents in question as the basis for discipline because of what it characterized as undue delay in initiating the disciplinary process. The employer took no concrete disciplinary action for over two and a half months and for that reason, it was asserted, the union was prejudiced in the presentation of its defence to the allegations. We do not agree that the circumstances are such as to cause us to deny the employer to rely upon such incidents. While the elapse of time between the incidents complained of and the ensuing discipline is a cause for some concern, at the same time it is important to note that the conduct complained of is that of poor work performance, which in most cases is noticeable, and indeed, amenable to discipline, only when treated as a series of incidents. For that reason, arbitrators have found it appropriate that the employer discipline for such incidents collectively, as it were, with a resulting elapse of time between the incident and ensuing discipline. (See *Re Air Canada* (1981), 4 L.A.C. (3rd) 68 (Shime). Bearing this in mind, we do not find the span of time between the incidents and the discipline to be so unreasonable as to constitute undue delay. Furthermore, we are not of the view that the prejudice to the trade union was substantial, especially in light of the defence it raised: that Mr. Morra was operating under extremely trying



conditions, at the time, namely, a move of his office. At its highest, this second prong of the trade union's defence to the allegations consists of a factor be considered in mitigation of the penalty. Indeed, although the trade union sought in various ways to minimize the extent of the wrongdoing, the fact remains that Mr. Morra neglected to perform his duties.

21. That is not to say that the period of time between the events in question and the discipline is a matter of indifference to the Board. Much was made by employer counsel of the somewhat sparse evidence provided by Mr. Morra with respect to precise circumstances obtaining in the office at the time, and it was submitted that no causal connection had been established to tie the move to Mr. Morra's failure to abide by the instructions given him. Under the circumstances, notably, that Mr. Morra was first required to provide his version of events some two and a half months after the fact, this is not surprising. Accordingly, we decline to infer an attempt to deceive the Board from his failure to provide detailed evidence regarding the move's effect on his work performance. On balance, we are satisfied that the circumstances obtaining in the office in mid-March were indeed unusual due to the disruption caused by the move, and although not excusing his failure to record his assignments, certainly contributes to an understanding of why he acted as he did.

22. While Ms. Robinson clearly experienced a deep sense of frustration from what she attributed to be Mr. Morra's shortcomings in organizational matters, for reasons that remain unclear she was reluctant to provide Mr. Morra with any training from external sources other than the aforementioned upgrading of his computer skills. Rather, Mr. Morra's training in the position consisted of his weekly meetings with Ms. Robinson, adverted to earlier, as well as occasional, unscheduled meetings in which his job was explained to him by Ms. Robinson. Indeed, Mr. Morra's initial request for external training in March was refused by her, and it was only after he repeated this request that she made the necessary arrangements to have him attend a course entitled "The Indispensable Assistant" in late April, 1994. No reasons were provided as to why such obviously relevant training was undertaken only five months after the commencement of Mr. Morra's employment in that position, especially when it was apparent to the employer that he had no experience outside of his word processing functions and that he was experiencing difficulties with the administrative elements of his new position.

23. Mr. Morra testified that he found the course to be very useful. However, the ensuing course of events provided him little opportunity to demonstrate what salutary effect it may have had with respect to the performance of his work. He returned from the course on April 28, 1994. On May 2, 1994, the employees at the Ombudsman's Office commenced a job action (whose precise legal characterization is a matter of considerable dispute in another proceeding) that continued until May 16, 1994. It is sufficient to relate that the bargaining unit employees, including Mr. Morra, refrained from attending work during this time and that the Ombudsman's offices, although they remained open and were operated by other personnel, including Ms. Robinson, did not function in the normal manner. It is also the agreed upon position of the parties that Mr. Morra's participation in the work stoppage had no bearing upon the employer's decision to subsequently discipline or discharge him.

24. It was immediately upon his return from the job action that, Ms. Robinson testified, Mr. Morra committed another clerical error that occasioned her to review his entire employment record. The Board notes that, quite fairly, counsel for the employer did not seek to rely upon this incident in his argument to sustain the discipline. Nevertheless, the incident, which occurred on May 19, 1994, appears to have been of sufficient significance in the decision-maker's mind to initiate disciplinary proceedings that raised the spectre of discharge. The "incident" amounts to Mr. Morra failing to align the columns in the in-house newsletter in a manner preferred by Ms. Robinson. According to Ms. Robinson, who was the newsletter's editor, Mr. Morra had been instructed

to level the columns, something he failed to do on May 19. However, the evidence is clear that on a number of occasions, both before and after that day, the Newsletter, as typed by Mr. Morra and approved by Ms. Robinson, issued without complaint in precisely the format presented by Mr. Morra that day. Accordingly, the standard of performance or conduct that the employer alleges that Mr. Morra has not attained is far from clear. Moreover, it was not disputed that the re-formatting of the columns in the manner preferred by Ms. Robinson was an editorial task that would take only seconds to correct. Indeed, Ms. Robinson conceded that the problem itself was of a "very minor" nature, a characterization that the Board finds to be still something of an understatement. While we do not doubt that Ms. Robinson was very upset at having to perform the minor editorial detail, under all the circumstances we are also satisfied that Mr. Morra did not engage in conduct worthy of discipline.

25. Before turning to an assessment of the discipline, it is useful to review another incident that, although relied upon by Ms. Robinson both in her decision to discipline Mr. Morra and at the hearing, was not put forth as grounds for discipline during argument. On March 22, Mr. Morra was instructed by Ms. Allison Irons, an employee in another department of the Ombudsman's office to process a series of letters to certain provincial and federal politicians. According to Ms. Robinson, notwithstanding the clear instructions that he had received, Mr. Morra seriously misconstrued the scope of the assignment, turning a job that she estimated should take only two hours into an all-day affair. However, the evidence with respect to the directions Mr. Morra received is far from clear, and it is at least as likely that the delay in performing the task was the result of ambiguous instructions or intervening technical problems as through Mr. Morra's poor performance.

26. An aspect of the "letter merging incident" stressed by Ms. Robinson was what she attempted to characterize as Mr. Morra's poor attitude in refusing to perform the tasks requested of him by Ms. Irons. The evidence is not significantly in dispute. It appears that Mr. Morra was initially approached by Ms. Irons to perform the letter merging task. Mr. Morra, upon being so requested, approached Ms. Robinson and advised her of his view that it was "not my job". Ms. Robinson promptly disabused Mr. Morra of that view, and directed him to perform the work. Mr. Morra complied immediately, and thereafter, never questioned the propriety of a work assignment. In our view this incident cannot be construed as indicative of an insubordinate attitude, as suggested by the employer and more particularly, as maintained by Ms. Robinson. As was noted above, Mr. Morra had been counselled to assert control over his workload. It appears to the Board that this counselling was meant to apply to precisely the type of situation with which Mr. Morra was faced, and that in letting Ms. Robinson know that it was his opinion that it was not his job, he was doing precisely what he was told to do. In cross-examination, Ms. Robinson noted only that "he picked the wrong time to say No", without elaborating when, precisely, a more appropriate time might be. Indeed, it appeared to be Ms. Robinson's view that Mr. Morra's failure to perform the letter merging function in accordance with her expectations was an intentional act in defiance of her authority. No evidence was led to support this view and indeed, as indicated above, the evidence is to the contrary.

27. Accordingly, we find Ms. Robinson's contention that Mr. Morra misconducted himself either by expressing his view that he should not perform the work, or, as suggested further, by defying her authority, to be entirely unfounded. Especially given the counselling he received regarding control over his workload, in our view it would be most unfair to discipline an employee in these circumstances.

28. Considerable evidence was led with respect to the two meetings that Ms. Robinson held with Mr. Morra on May 25 and June 2, 1994 the latter in the presence of a union representative. In general terms, the Board found the vast majority of this evidence to be entirely unhelpful in deter-



mining whether the discipline was for just cause, and we do not propose to review it in detail. It is sufficient to note that during the meetings of May 25, 1994, on the basis of the list she had compiled, Ms. Robinson reviewed with Mr. Morra the areas in which she found his performance to be lacking, including the incidents heretofore discussed in this decision, and notified him that, were his performance not to improve by June 30, 1994, he would be terminated. This information and warning was substantially reiterated in correspondence directed to him on May 26, 1994. Mr. Morra, for his part, was completely taken aback by this turn of events, and in an emotional outburst at the May 25 meeting, claimed that Ms. Robinson "was hired to fire [him]". It appears that Mr. Morra, overcome with emotion, was genuinely unable to continue in the meeting, and asked that another meeting be convened. Ms. Robinson agreed, and a meeting was held on June 2, in which Ms. Robinson essentially reiterated her concerns with respect to Mr. Morra's performance. Bearing in mind these circumstances, we find no basis in the employer's submission that Mr. Morra, in asking for a second meeting, was acting in an obstructionist manner that is in itself worthy of discipline. Similarly, we cannot agree with the trade union's submission that the meetings, and in particular, the manner in which they were conducted by Ms. Robinson, were initiated in bad faith. Indeed, the Board's concern with these meetings is not so much that they were conducted, but rather, that they were conducted at such a late time. While the resulting correspondence directed to Mr. Morra may not have been a model for the drafting of disciplinary notations, in that culpable and non-culpable matters were indiscriminately mixed and the description of the incidents themselves were lacking in detail, we are satisfied that the employer, albeit belatedly, succeeded in relating to Mr. Morra its concerns with respect to his performance.

29. Was the disciplinary sanction, which included a warning that summary termination would ensue in the absence of "substantial improvement", warranted in these circumstances? To summarize to this point, the evidence establishes that on four occasions in mid-March, Mr. Morra acted carelessly or with insufficient attention to his work. On one of these occasions, namely the missed shipment of materials to London, his careless performance caused considerable disruption to the employer's operations, while the effects upon the employer in the remaining instances was not substantial and did not exceed the level of inconvenience. On three of these occasions, his failure to perform his work were rooted in his consistent failure to make the necessary notations of the assignments despite being repeatedly told to do so. Under these circumstances, we are satisfied that the employer had cause for discipline on May 26, 1994.

30. The further question we must determine is whether the "last chance" ultimatum was an appropriate disciplinary response. Having regard to the circumstances outlined above, we are persuaded that the level of disciplinary sanction, i.e., a written warning that threatens discharge in the absence of immediate improvement in performance, is an entirely inappropriate penalty. Simply put, the circumstances to which the employer is responding are not of the sort warranting a "last chance" solution raising the spectre of summary dismissal. In this respect, we cannot accept the proposition advanced by the employer that Mr. Morra's misconduct was of the sort that would permit the employer to "accelerate" the process of progressive discipline. The misconduct complained of, although injurious of the employer's legitimate interest in ensuring that work is performed efficiently and to the best of the ability of its employees, cannot be considered so serious an employment offense as to constitute major misconduct. Particularly when Mr. Morra's entirely discipline-free record of some five and a half years is taken into account, we see no reason to escalate the process of progressive discipline in the manner chosen by the employer. Moreover, it is important to note that in considering the appropriateness of the "last chance" ultimatum, Ms. Robinson relied upon allegations of misconduct that, we have found, were groundless. Finally, the circumstances of the misconduct established by the employer are not free of mitigating circumstances, most notable of which are that all of the conduct complained of occurred within a two-week period of a lengthy tenure of employment, a consideration that lends credence to union's assertion that



unusual circumstances pertained during this time. Having regard to the foregoing, then, we exercise our discretion pursuant to our powers under section 81.2 (1.1) and find that the appropriate penalty for the misconduct to be a written warning with a notice that further discipline of increasing severity would ensue in the event of a recurrence of such conduct.

### III

31. In the employer's view, Mr. Morra did not demonstrate the requisite improvement after receiving the written warning of May 26 and, on June 28, 1994, he was terminated from employment with the Ombudsman. According to Ms. Robinson, it became apparent to her almost immediately that Mr. Morra was unlikely to improve his performance sufficiently to avoid termination. It seems clear that, by this time, the employer had run out of patience with Mr. Morra. Indeed, the evidence is undisputed that notwithstanding the June 30 deadline given him to improve his performance, the decision to terminate him was made by June 15 at the latest. To support its decision the employer relied upon three incidents, two involving Mr. Morra's failure to keep track of Special Reports in the office library. Upon reviewing this evidence, we are not satisfied that these allegations have been made out.

32. With respect to the Special Report incidents, the evidence is that, as part of Mr. Morra's job, he was required to keep multiple copies of these Reports in the Resource Centre for purposes of immediate distribution. The Resource Centre appears to have served both a distribution and a reference function, and it was expected that Mr. Morra would periodically go into the Resource Centre to check that there were sufficient copies of all the necessary materials. On June 3 and again on June 10, 1994, Mr. Morra was requested by Ms. Robinson to produce copies of the Special Reports. On both occasions, he was unable to do so immediately because there were no copies of these materials readily available and was required to approach other offices to retrieve the requested materials and to restock the shelves.

33. According to Ms. Robinson, since Mr. Morra was "responsible" for ensuring that the Resource Centre was adequately stocked, he was to blame when it was not. It is notable that she made no effort whatsoever to determine what efforts Mr. Morra had taken to ensure that the Resource Centre was adequately stocked. Indeed, by this point, she appeared to have no interest in hearing from him, to the extent of cancelling their weekly meetings as "pointless". Similarly, no effort appears to have been made by anyone acting on behalf of the employer to determine whether the shortage was caused by other personnel taking the "last copy" out of the Resource Centre, a possibility that raises itself rather starkly once it is known that the shelves were, in fact, restocked only a week earlier. Finally, there appears to have been no consideration that the situation may have resulted from the Resource Centre simultaneously serving both reference and distribution functions and that the problem was of a systems nature outside of Mr. Morra's control. Having regard to this evidence, it is clear that the employer acted on the basis of assumption, rather than fact, in determining that Mr. Morra was responsible for the situation, and the evidence advanced at the hearing does not make us conclude that this assumption was warranted. We note in particular that the employer has failed to take even the most rudimentary steps to investigate the incident, the first step, one would have thought, would be to seek some input from Mr. Morra. Accordingly, we find discipline in these circumstances to be unwarranted.

34. The employer also relies upon an incident that occurred on June 15, 1994, in which Mr. Morra allegedly failed to appropriately co-ordinate an envelope stuffing assignment for which he was responsible. According to Ms. Robinson, Mr. Morra permitted an employee named Zelina to attend a training course instead of requiring her to perform the envelope stuffing function. There appears to be no question that Zelina's absence that day caused considerable delay in the process

and required the reassignment of personnel to accomplish it. According to Ms. Robinson, Mr. Morra's fault lay in exercising extremely poor judgement in permitting Zelina to attend her course. However, Zelina, who is an employee of considerably higher rank than Mr. Morra, was not called as a witness in these proceedings, and counsel for the employer conceded that the evidence of the alleged misconduct was, at its highest, of an entirely hearsay nature. Furthermore, as Ms. Robinson had by that point decided that further communication with Mr. Morra would be to no avail, neither she nor anyone on behalf of the employer spoke to him with respect to this incident. Mr. Morra, for his part, testified that Zelina simply told him that she was not available that day, and that the question of him permitting her to go to her course simply did not arise.

35. The precise nature of the conversation between Zelina and Mr. Morra on June 15 is of fundamental importance in establishing the employer's case with respect to this incident. In the present circumstances, we are not inclined to give the hearsay account offered by the employer substantial weight, particularly since no explanation was provided for the employer's failure to call Zelina as a witness. Furthermore, while the Board has some concerns with respect to Mr. Morra's ability to withstand the tug of self-interest in fashioning his answers in evidence, we nevertheless cannot accede to the employer's submission that his evidence should be given no weight for that reason. We note in particular that the thrust of Mr. Morra's defence in this regard was not significantly challenged in cross-examination, and no attempt was made to respond to the union's claim that it was unlikely that Mr. Morra would be in a position of giving permission to a much more senior employee. Having regard to all of the circumstances, then, we are not satisfied that the employer has established its case that Mr. Morra acted in a manner that should attract discipline with respect to the Zelina incident.

#### IV

36. To summarize, we have found that on four occasions in mid-March, 1994, Mr. Morra performed his work in a manner that can be fairly characterized as careless and that some discipline is warranted for that misconduct. However, we have found that the discipline accorded to him, which included a "last chance" threat of discharge in the event that his performance did not improve immediately, to be an inappropriate disciplinary response. Instead, the appropriate disciplinary response in the circumstances would be a written warning advising him that further disciplinary responses would ensue in the event of reoccurrence of such conduct. Finally, we have found that the allegations of misconduct subsequent to the May 26 warning not to have been made out by the employer. Under these circumstances, we have no hesitation in concluding that the discharge of June 28, 1994 was entirely without foundation and therefore cannot stand.

37. Furthermore, we see nothing in the evidence that would make us conclude that reinstatement to an identical or substantially similar position with the responding party employer would be an inappropriate remedial response. In particular, there is nothing to suggest that Mr. Morra has conducted himself in a such a manner so as to make us conclude that the employment relationship is irretrievably sundered, nor is there any basis for us to believe that any attempts at reinstatement are doomed. In our view, the arbitral presumption that reinstatement is the appropriate remedial response to a discharge without just cause is particularly apt in circumstances contemplated by section 81.2, where the trade union has only recently been certified, and should not be easily displaced. In that regard, we cannot accept that Mr. Morra's single outburst at the meeting of May 25, 1994, (which, albeit belatedly, he acknowledged to be inappropriate) is of sufficient gravamen to displace that presumption.

38. Finally, while we have found that in substantial part the discipline levied against Mr. Morra is unwarranted, at the the same time we do not wish this decision to be interpreted by the



parties, and particularly by Mr. Morra, to be a general endorsement of his work performance in the Administrative/Production Secretary position. The evidence is clear that on a number of occasions, Mr. Morra failed to take the necessary steps to ensure that his work was done properly, and at least on one occasion, caused considerable disruption to his employer's operations by failing to ensure that a shipment of materials was sent at the appropriate time. We have already made it clear that further discipline may ensue as a result of a recurrence of such conduct. However, it should also be noted that, in addition to disciplining for poor work performance of a culpable nature, the employer is empowered to remove an employee from a position he or she holds, or, in certain circumstances, to dismiss an employee, when it is demonstrated that the employee is unable to fulfill normal employment responsibilities. While the employer did not in this case seek to rely upon such grounds (and, given the circumstances of Mr. Morra's tenure in the position, it is unlikely to have succeeded), we should not be taken as expressing a view that Mr. Morra's employment is free from such concerns. A number of the administrative job functions of the Administrative/Production Secretary position are new to Mr. Morra, and although the circumstances of his employment between November 1993 and his discharge in June 1994 would not provide a fair assessment of his ability in this respect, it remains to be seen whether he will, in fact, become reasonably proficient in the performance of these tasks. Mr. Morra, of course, has had a substantial period of unwarranted separation from the workplace to reflect upon his apparent shortcomings in this respect and, upon his return to work, it will be incumbent upon him to ensure that his work is performed to the best of his ability.

39. Accordingly, having regard to the foregoing, we find that the employer has violated section 81.2 of the Act by disciplining and discharging Mr. Morra without just cause. We direct the employer to reinstate Mr. Morra forthwith, without loss of seniority, to an identical or substantially similar position held by him immediately prior to his discharge. Further, we direct the employer to reimburse Mr. Morra for all resulting lost wages and benefits, including interest calculated on the basis of the formula set out in *Hallowell House*, [1980] OLRB Rep. Jan. 35. Finally, we direct the employer to remove all disciplinary notations subsequent to the February 14, 1994 evaluation, including any reference to the discharge, from Mr. Morra's employment record and to replace it with a warning letter as set out in paragraph 30 of this decision.

40. We remain seized with respect to any remedial matters that may arise from the implementation of this decision.

41. Finally, the parties had agreed to hold in abeyance the remaining aspects of the present section 91 application pending the resolution of the matter of Mr. Morra's discharge. It is hoped that the parties will be able to resolve these matters without the requirement of what promises to be further extensive litigation. With this in mind, before the Board will schedule further hearing dates, the parties are directed to contact the Labour Relations Officer forthwith to arrange a meeting in which further settlement discussions may take place. In the event that such efforts prove fruitless, either party may ask to have the matter brought on for hearing by contacting the Registrar on or after January 10, 1995.

42. The matter is referred to the Registrar.

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**2428-94-R Ontario Secondary School Teachers' Federation, Applicant v. Ottawa Board of Education, Responding Party.**

**Certification - Bargaining Unit - Board not persuaded that union's proposed bargaining unit restricted to teachers of Adult Basic English and English as a Second Language an appropriate bargaining unit**

**BEFORE:** *Bram Herlich*, Vice-Chair, and Board Members *W. A. Correll* and *R. R. Montague*.

**APPEARANCES:** *Ian J. Fellows* and *Brian Babineau* for the applicant; *Steven L. Moate*, *E. Rand Lintell*, *Lorne Rachlis* and *Alan Wotherspoon* for the responding party.

**DECISION OF THE BOARD;** December 9, 1994

1. This is an application for certification. By agreement of the parties this matter proceeded directly to a hearing without the usual prior meeting with a Labour Relations Officer. This was the result, principally, of the identification by the parties of a substantial issue relating to the bargaining unit description which they felt could only be resolved through a Board determination. The applicant (hereinafter "OSSTF" or the "union") seeks a bargaining unit composed of "all Continuing Education Instructors employed by the respond[ing party] in the City of Ottawa in Adult Basic Education and Adult English as a Second Language courses...". The responding party (also referred to as the "employer" or the "OBE") contends that the appropriate unit should include *all* of its Continuing Education Instructors and should not be restricted to those instructors who teach Adult Basic Education or Adult English as a Second Language courses. There are other and less significant differences in the bargaining units proposed by the parties which are not material to our present purposes.

2. At the conclusion of the union's case the OBE indicated that it was prepared to call evidence in support of its case. The Board, however, directed the parties to make their submissions on the merits of the issue on the basis of the evidence before the Board and to address the question of whether there was any necessity for the Board to hear further evidence in regard to this issue. Having heard those submissions the Board reserved any further ruling in this matter and adjourned the proceedings. Having now had the opportunity to review the evidence and the parties' submissions, we are satisfied that there is no need to hear any further evidence in order to determine the bargaining unit issue at hand.

3. The evidence before us consists of a number of documents marked as exhibits as well as the testimony of Brenda Small and Sylvia Sheridan both of whom are currently employed as instructors in the OBE Continuing Education Department. Although there are clearly differences between the parties as to how the Board ought to characterize portions of that evidence, it is fair to say that there is, ultimately, little dispute between the parties regarding the salient facts involved in this aspect of the case. In this context it is not necessary for us to set out those facts in intricate detail and we shall begin with an extremely basic presentation of those facts and shall refer, as necessary, to further facts during the course of this decision. We should remark at the outset, however, that both Ms. Small and Ms. Sheridan impressed us as candid and forthright witnesses who gave their evidence with a sincere desire to tell the truth. Their testimony and general demeanour reflect positively not only on the applicant on whose behalf they testified, but also on the OBE whose Continuing Education Department can only benefit from their past and continuing participation.

4. The OBE Continuing Education Department provides a wide range of courses to its

community. These include courses taught by “continuing education teachers” as that term is defined in section 1(1) of the *Education Act*. Those courses are commonly referred to as “credit courses”. It is common ground that continuing education teachers are teachers and thus not subject to the terms of the *Labour Relations Act* and are not to be included in the instant bargaining unit (while this proposition now appears settled, the history leading to that conclusion is one that neither these parties nor this Board is unfamiliar with: see *Ottawa Board of Education*, [1985] OLRB Rep. July 1139). Instructors, on the other hand, though they too provide instruction in continuing education courses, are, under the same section of the *Education Act*, to be distinguished from teachers. The union now asks us to distinguish instructors of Adult Basic English (“ABE”) and English as a Second Language (“ESL”) (referred to jointly as “ABESL”) from all other instructors in the continuing education department.

5. Apart from ABESL, instructors are employed in the OBE continuing education department to provide a wide variety of courses. Instruction in some 40 different languages is offered through the OBE’s International Languages courses (some of which were formerly called Heritage Language). These courses are generally taught for a few hours per week on a single day (usually Saturday). Extra Curricular Creative Arts courses offer instruction in a wide range of instrumental and vocal music (offered in private, semi-private or group classes), dance and visual arts. These courses are taught before or after regular school hours or during lunch hour. Students typically take courses on a weekly basis in classes which range from 1/2 to 1-1/2 hours in duration. Finally, the Speciality, Skills and Interest Program offers a wide and eclectic range of courses to the general community. Some thirty pages of the OBE’s calendar of course offerings are devoted to listing and describing these courses. The courses fall under the general headings of computer training, business, finance, languages, creative expression, personal enrichment, well being and active living.

6. The union advances a three pronged argument in this case. First, it asserts, the ABESL instructors are different from all the others. Second, in what may really be a variant or extension of the first, it asserts that the stake of ABESL instructors in collective bargaining is different from the others. Finally, in what was identified as perhaps the most important factor, we were urged to conclude that the history of what was described as autonomous employee organization in relation to these instructors should be accorded great significance. In advancing its argument the union relied upon previous decisions of the Board in *Hospital for Sick Children*, [1985] OLRB Rep. Feb. 266; in a series of cases in which the Board found bargaining units consisting solely of registered and graduate nursing assistants to be appropriate: *The Mississauga Hospital*, [1991] OLRB Dec. 1380; *South Muskoka Memorial Hospital*, [1992] OLRB Rep. Apr. 520; and *Englehart & District Hospital Inc.*, [1993] OLRB Rep. Sept. 827 (but see *Strathroy-Middlesex General Hospital*, [1992] OLRB Rep. Oct. 1103 where the Board, on the facts before it in that case, concluded that such a bargaining unit was not appropriate); and in a series of recent Board decisions where the utility of the notion of “community of interest” has come under increasing critical scrutiny as a tool in bargaining unit determinations: *The Governing Council of the Salvation Army in Canada and Bermuda*, [1994] OLRB Rep. Jan. 85; *Burns International Security Services Limited*, [1994] OLRB Rep. Apr. 347; and *Active Mold Plastic Products Ltd.*, [1994] OLRB Rep. June 617. Most importantly, the union sought to distinguish the decisions of the Board in *The Board of Education for the City of Toronto*, [1986] OLRB Rep. June 900 and *The Board of Education for the City of Windsor*, [1990] OLRB Rep. July 815 where bargaining units similar, if not identical, to the one proposed in the instant case were found not to be appropriate for collective bargaining.

7. There is no doubt that ABESL instructors constitute an identifiable group easily distinguishable from all other continuing education instructors. And while there may have been some relatively infrequent examples of movement of instructors as between ABE and ESL courses, it would appear that any movement or overlap of assignments as between ABESL and other continu-



ing education instructors is all but non-existent. It is also clear that the distinction between ABESL and other instructors may be seen in the nature of the subject matter instructed, its manner of delivery and even modes of curriculum development. We are not, however, persuaded that these differences emerge from anything ultimately more significant (for our purposes) than a difference in the subject matter being taught or, to adhere to the perhaps less elegant language of the *Education Act*, instructed. In this respect we note that while the content of various courses may differ dramatically, there remain certain unavoidably essential characteristics associated with the general process of instruction, preparation, curriculum development, and evaluation the parameters of which will, of course, vary from course to course. There was an undercurrent of what might be described as academic elitism associated with portions of the union's position. One can perhaps appreciate or at least understand the nature of those sentiments in the context of a continuing education program which includes courses which may be characterized as more traditionally academic in nature with general interest courses which may, at least by comparison, appear to be more frivolous in nature. Even if this distinction were a useful one for our purposes, it does not lead inexorably to the conclusion that a bargaining unit restricted to ABESL instructors is appropriate. There are numerous other courses offered by OBE instructors which would appear to make claims of academic integrity similar to those which might be made by ABESL courses - for example, courses such as those offered in a wide variety of languages offered at beginner, intermediate and advanced levels.

8. In what is a related submission, the union argued that the interests of ABESL instructors in collective bargaining differ from those of other instructors. This argument was related to the evidence of Ms. Small regarding her view of herself and her ABESL colleagues as professionals for whom ABESL instruction constitutes a career; a state of affairs the union sought to distinguish from other instructors. Reliance was also placed on Ms. Small's evidence suggesting that there was a greater tendency on the part of ABESL instructors to work a greater number of hours as compared with, in particular, instructors providing general interest courses. There are several difficulties associated with this line of argument. First, it is not at all apparent to us that the evidence supports the argument. It would be imprudent for the Board to draw firm conclusions about the characteristics of various groups of instructors based on the evidence before us. That evidence suggests that there is a significant number of ABESL instructors who teach less than 15 hours per week. We are hard pressed to infer from that fact alone that those individuals do not view themselves as "career" ABESL instructors or, alternatively, that they do, but have merely been unable to secure the number of working hours they might like to have. Similarly, the fact that an individual may teach only a single language or creative arts course tells us very little about their personal notions of professionalism or career. There is an irony here which cannot escape comment. There was an implicit criticism which, from time to time bubbled to the surface of the union's case. It is suggested that, compared to their co-workers who teach in elementary and secondary schools, ABESL instructors have been historically shortchanged. It is suggested that part of the rationale for that state of affairs stems from attitudes about women in the workforce working for "pin money". These criticisms may be well founded but are clearly beyond the scope of our inquiry. The irony, however, lies in a characterization of other instructors which in many respects resembles the impugned characterization of ABESL instructors.

9. In any event and more importantly, even assuming the limited evidence on the point persuaded us (which, frankly, it does not) that there are indeed generalized and significant differences in the attitudes of ABESL, as opposed to all other, instructors regarding professionalism and career issues, we are not satisfied that such a difference would warrant excluding all other instructors from an ABESL bargaining unit. The rationale for such an exclusion is, of course, premised on the assertion that there is no community of interest as between ABESL and other instructors.



In this regard we refer the parties to the following observation of the Board at paragraph 27 of the *Burns International* case (cited above):

... nor does the term "community of interest" usually provide much guidance to what is an appropriate bargaining unit. All employees share a "community of interest" by virtue of working for the same employer, and "real life collective bargaining" seems to be able to accommodate groups with quite different duties and conditions, who one might still argue had a separate "community of interest".

10. The union, however, does not base its case exclusively on a community of interest argument. The mere fact that a unit of all instructors might be an appropriate unit does not, despite the generally greater attractiveness of broader based bargaining, automatically lead to the conclusion that a smaller unit such as the one proposed by the applicant is necessarily not an alternative appropriate unit. Rather the Board will focus on the test articulated in the *Hospital for Sick Children* case (cited above) at paragraph 23:

... does the unit which the union seeks to represent encompass a group of employees with a sufficiently coherent community of interest that they can bargain together on a viable basis without at the same time causing serious labour relations problems for the employer.

11. It is the Board's traditional concern about undue fragmentation as well as its general aversion or at least caution in respect of classification based bargaining (in a non craft setting) which has been and continues to be problematic in relation to the bargaining unit currently sought by the applicant. In *The Board of Education for the City of Toronto* (cited above) a bargaining unit restricted to ESL instructors was rejected by the Board. Relying on that decision, the Board, a few years later, rejected this applicant's claim for a bargaining unit limited to ABE and ESL instructors in *The Board of Education for the City of Windsor* (cited above).

12. The union did not argue that those cases were wrongly decided nor did it ask us to depart from the principles set out in those cases. We are simply not persuaded that the facts of the instant case are so significantly different from those the Board considered in the *Toronto* and *Windsor* cases so as to warrant a conclusion different from that the Board arrived at in those cases. In this context we are simply not persuaded that the level of what OSSTF referred to as autonomous employee organization within the group of ABESL instructors has the significance claimed by the union. The facts surrounding this aspect of the case are readily distinguishable from those set out in *The Mississauga Hospital* (cited above). It is conceded that, notwithstanding the efforts of Ms. Small, Ms. Sheridan and others who have been active in a relatively informal (it was not suggested that this group is or was a trade union within the meaning of the Act) group ("TABESL") of ABESL instructors, the employer for some 10 years has not distinguished between ABESL and other instructors with respect to essential terms and conditions of employment. The mere fact that the employer has agreed to deal with TABESL officials as representatives of ABESL instructors does not, in the instant case, assist us in concluding that a bargaining unit restricted to ABESL instructors would be appropriate. The evidence discloses that the employer, unlike *The Mississauga Hospital*, has consistently treated all instructors as a grouping for the purposes of terms and conditions of employment. The employer may, as a matter of courtesy or convenience, have allowed TABESL to provide representation for ABESL instructors; the evidence discloses that representatives of other instructors (although perhaps not chosen quite so formally or democratically) have also participated in discussions with the employer. None of this, however, changes the uncontroverted fact that the OBE has not distinguished as between different types of instructors with respect to terms and conditions of employment. In that context, the union's evidence in this regard does not advance its case.

13. In view of all of the above, the Board is not persuaded that a bargaining unit restricted

to ABESL instructors is an appropriate bargaining unit. We are, however, content that unit which included all continuing education instructors would be an appropriate one. In the circumstances, including the fact that there is another, admittedly less significant, issue related to the bargaining unit description which was not argued before us, we shall not make any further or final ruling with respect to the bargaining unit issue at this stage of the proceedings.

14. Further, having regard to the discussions with the parties during the course of the hearing, the parties are hereby directed to meet with a Labour Relations Officer to complete the usual report prepared in certification cases. That report will set out, among other things, the parties' agreement (or their positions in the event there is no agreement) with respect to the list(s) of employees for the purposes of the count.

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**4022-93-R Ontario Public Service Employees Union, Applicant v. The Canadian Red Cross Society, Responding Party v. Canadian Red Cross Blood Transfusion Service Employees Association, Intervenor**

**Bargaining Unit - Certification - OPSEU applying to displace incumbent employees' association - OPSEU asking to be certified in respect of single bargaining unit including full-time and part-time employees - Board finding that incumbent union holding bargaining rights in respect of separate bargaining units for full-time and part-time employees - Board finding that OPSEU's proposed bargaining unit appropriate - Board also finding that ballots of probationary employees cast in pre-hearing representation vote ought to be counted**

**BEFORE:** *Lee Shouldice*, Vice-Chair, and Board Members *J. A. Ronson* and *R. R. Montague*.

**APPEARANCES:** *David Wright* for the applicant; *Charles V. Hofley* for the responding party; *B. P. Bellmore* for the intervenor.

**DECISION OF LEE SHOULDICE, VICE-CHAIR, AND BOARD MEMBER R. R. MONTAGUE;**  
December 15, 1994

**I. Introduction**

1. This is an application for certification, in which a pre-hearing vote was ordered by a differently constituted panel of the Board on March 21, 1994. The vote was subsequently held and the ballot boxes sealed pending the resolution of the outstanding issues between the parties. On May 17, 1994, this panel was convened to deal with those issues, in particular the inclusion of the ballots of probationary employees in each unit and whether the intervenor holds bargaining rights with respect to one or two bargaining units. A further, related issue is the appropriateness of the bargaining unit applied for by the applicant.

2. By way of decision dated June 27, 1994, this panel of the Board provided the parties with the following "bottom line" determination:

2. In our view, it is appropriate to provide the parties with a "bottom line" decision on these issues so as to permit for a timely determination of the application. Having heard both the evidence (which was agreed upon by the parties) and the argument of the parties, the majority of the Board (Board Member Ronson dissenting) hereby rules as follows:

- (a) the intervenor holds bargaining rights in respect of two bargaining units; and
- (b) the appropriate bargaining unit for the purposes of this application is that proposed by the applicant, and which is reflected by the application for certification;

The full panel of the Board rules that the probationary employees are members of the bargaining units and their segregated ballots should be counted. Full reasons for this decision will issue at a later date.

These are the reasons for that “bottom line” decision.

## **II. Factual Background**

3. The responding party, The Canadian Red Cross Society (hereinafter referred to as “Red Cross”), operates blood transfusion centres out of the cities of Toronto, Hamilton, Ottawa and London. The intervenor, Canadian Red Cross Blood Transfusion Service Employees Association (hereinafter “the Association”), represents what, for the purposes of convenience, we will describe as “support staff” working at or out of the above-noted locations, with certain exclusions respecting staff performing managerial functions. The Association was certified by this Board as the exclusive bargaining agent for full-time support staff of Red Cross by way of certificate dated April 21, 1976; the same certification for the part-time, casual and temporary support staff of Red Cross was obtained by the Association by way of Board certificate dated December 18, 1985.

4. The following facts were agreed to by the parties and presented to the Board as the facts upon which the outstanding issues should be decided. There is one Labour/Management Committee for each blood transfusion centre and there is a specifically designated part-time and full-time employee representative on that Committee. There is no grievance committee. The usual practice regarding grievances is for grievances from full-time employees to be handled by a full-time grievance representative and a part-time grievance to be handled by a part-time grievance representative. At the Toronto Centre, there are variations on this usual practice, either because there is no part-time grievance representative or because there are circumstances when part-time issues have been dealt with by full-time grievance representatives.

5. With respect to negotiations, there is one committee which negotiates on behalf of full and part-time employees. The membership of the Association negotiating committee is comprised of part-time and full-time employees. There is one set of meetings, and there are separate part-time and full-time proposals. The parties typically negotiate full-time issues to impasse and then turn to part-time issues. When conciliation has been necessary, there have been two applications for conciliation, two Ministry of Labour file numbers, two separate appointments of the same conciliation officer, and one joint meeting or meetings with the officer. The result of these meetings has been one tentative agreement, with two signature sheets. The tentative agreement is voted on by employees at each of the four centres. There is one meeting and one vote at each blood transfusion centre, and the ballots of the part-time employees and the full time employees go into one ballot box.

6. The Association is governed by a single Board of Directors that has separately elected part-time and full-time representatives. There is a segregated ballot of part-time employees for the election of the part-time representatives.

7. With regards to the probationary employees, these individuals are not members of the Association, and do not pay union dues. They do not have the right to vote in Association elec-



tions, and they do not appear on the seniority list. As a general practice, probationary employees do not have the right to vote for ratification of the collective agreement. There is, however, one example (in 1988) of a probationary employee casting such a vote.

8. The Board was provided with copies of the collective agreement documentation, in effect from April 1, 1992 to March 31, 1994. There is no dispute that this application for certification is timely.

### **III. Issues and Decision**

#### **(a) Does the Association Hold Bargaining Rights With Respect To One Or Two Bargaining Units?**

9. The applicant submits that the Association holds rights with respect to one comprehensive bargaining unit composed of both full-time and part-time employees, notwithstanding that the two groups were initially certified separately. In support of this conclusion, counsel for the applicant specifically refers to the physical structure of the collective agreement documentation and the agreed-upon facts outlined above respecting the Labour/Management Committee, the grievance practice of the parties and the procedure utilized by the Association for negotiating and ratifying the collective agreement document. It is counsel's submission that, as a practical matter, the parties have combined the two units into one. Furthermore, counsel states that as that same combined unit is the one applied for by the applicant, the applied for unit is an appropriate one for collective bargaining. Counsel relies upon *Ontario Hydro* [1980] OLRB Rep. June 882, *Westburne Industrial Enterprises Ltd.* [1989] OLRB Rep. June 658; and *K-Mart Canada Limited* [1982] OLRB Rep. Nov. 1660.

10. Red Cross and the Association dispute this result. Counsel for these parties focus on the existence of two separate Board certificates and the two separate collective agreement documents which contain separate recognition clauses, seniority lists, layoff and recall rights and other obligations. Counsel submit that the "common sense" decision to bargain the two contracts together in time and place should not be considered as an admission by Red Cross and the Association that the units have been consolidated. Counsel argue that the optics of the situation should not govern the substantive result of the circumstances.

11. In our view, the Association has not, by its conduct or by the structure of its collective agreement negotiations, consolidated what were two separate units into one unit. Turning initially to the structure of the collective agreement booklet, it is apparent that the part-time collective agreement is referred to in the Table of Contents of the full-time collective agreement as "Appendix 'A'" to the full-time agreement, and that Article 39.01 of the full-time collective agreement makes a similar reference. In our view, though, it is clear from the document that it contains two separate collective agreements. Each agreement has its own cover page which describes the content of the pages that follow as an "agreement". Each agreement has a separate signature page, with separate provisions relating in particular to the full-time or part-time employees to which the specific agreement applies. Common provisions are contained in each of the agreements, rather than in one agreement applicable to both full-time and part-time employees. The documents, in our view, evidence an overall intention by the parties to keep the bargaining units separate.

12. We agree with counsel for Red Cross and the Association that the fact that, for practical purposes, the intervenor conducts negotiations in a manner that partially obscures the distinction between the two units is insufficient to lead the Board to conclude that the Association has, in law, consolidated the two units. The evidence regarding negotiation practice, considered in its totality, is hardly so unambiguous as to permit only for the conclusion urged by the applicant. If anything

the evidence regarding negotiation practice and ratification supports the position of Red Cross and the Association.

13. The most significant fact in evidence which could lead us to the conclusion that the units have been consolidated is that the Association conducts the ratification vote in the manner described above; that is, by mixing the ballots cast by the full-time and part-time employees. By allowing the votes to be mixed together, the distinction between the full-time and part-time units is clearly blurred. However, in light of the other evidence outlined above which evidences a contrary intention, we are not satisfied that in this case the mixing of the ballots should be determinative. On balance, we are of the view that the Association continues to hold bargaining rights for two separate bargaining units.

**(b) Are Probationary Employees Included In The Bargaining Units?**

14. One issue in dispute between the parties is whether the probationary employees are included within the units represented by the intervenor. It is the position of the applicant that they are, and that their ballots should be counted. Once again, Red Cross and the Association dispute this result and urge the Board to find that the probationary employees are not entitled to vote.

15. In our view, the position taken by Red Cross and the Association has no merit. The full-time collective agreement and the part-time collective agreement both define the term “employees” to mean those persons identified in the recognition clause of the agreement as members of the bargaining unit. The respective recognition provisions contain certain exclusions, the part-time provisions excluding supervisory workers and the full-time provision excluding supervisory workers “and those employed on a casual, part-time or temporary basis”. Nowhere are probationary employees excluded from the bargaining units. Where an “all employee” recognition clause defines the extent of the union’s representation, unless a group of employees is specifically excluded from the bargaining unit the group will be included within the unit. There being no such exclusion here for probationary employees, the probationary employees clearly fall within the bargaining units represented by the Association.

16. Counsel for Red Cross and the Association in essence take the position that probationary employees, having very few, if any, rights under the collective agreements, and having very little input, if any, into the internal affairs of the Association, ought to have no input into the result of this application for certification, and suggest that the Board ought to apply what were described in argument as “equitable rules of fairness”. It is not evident to us that “fairness” or “equity” dictates that the probationary employees be deprived of a vote in this application. In point of fact, if anything, “fairness” or “equity” would suggest that these employees not be disenfranchised. Although it is quite true that their rights under the collective agreement are circumscribed in many respects, the Association is their bargaining representative and in this application, where the Association’s continuing right to represent those same employees is under challenge by the applicant, it would seem both equitable and fair that these employees be entitled to exercise a vote in that process.

17. Accordingly, we find that the probationary employees are included in the bargaining units represented by the Association and are properly entitled to vote in this proceeding.

**(c) Appropriate Bargaining Unit**

18. The applicant has applied for the following bargaining unit, which it states is a unit appropriate for collective bargaining:



"All non-professional employees (support staff) of the Canadian Red Cross Society working at or out of the Toronto Blood Transfusion Centre, the Hamilton Blood Transfusion Centre, the Ottawa Blood Transfusion Centre and the London Blood Transfusion Centre, together with all employees hired to work in or out of specific locations outside the boundaries of the Toronto, London, Hamilton or Ottawa Blood Transfusion Centres, employed as Clinic Assistants, Clerical Staff, Transport Staff, Laboratory Helpers and Utility persons, save and except Transport Supervisors, Assistant Transport Supervisors, Supervisors of Administrative Services, and persons employed above these ranks; all as described in the Collective Agreement between the Canadian Red Cross Society Blood Transfusion Service and the Canadian Red Cross Blood Transfusion Service Employees Association dated October 1, 1992, Appendix A to the Agreement and the Letter of Understanding dated July 1993 and persons for whom any trade union held bargaining rights as of February 18, 1994."

In substance this is a unit consisting of the full-time and part-time units currently represented by the Association.

19. In an application for certification where the applicant desires to displace an incumbent bargaining agent, the Board's jurisprudence reflects a strong tendency to favour a bargaining unit which mirrors the bargaining unit represented by the incumbent. This approach is reflected by the case of *Smith Falls Community Hospital Corporation* (Board file numbers 2420-88-R and 2421-88-R, May 23, 1989, unreported) at paragraph 4:

Faced with the prospect of having employees in these two units represented by different trade unions, the respondent now argues that the appropriate bargaining unit in these applications is a single unit consisting of all stationary engineers and helpers employed by the respondent in Smiths Falls. The intervener opposes this suggestion. Had a majority of affected employees at each location voted in favour of representation by the applicant, we would have had little difficulty proceeding in the manner suggested by the respondent. As it is, however, all of the North Unit employees who cast ballots voted in favour of the intervener, while all of the employees in the South Unit voted in favour of the applicant. It is true, as the respondent's representative argued, that the wishes of employees are not the only consideration in determining the appropriate bargaining unit. One of the very strong premises on which the Board operates in displacement situations, however, is that the collective bargaining structure which exists in the relationship between the employer and incumbent trade union is *prima facie* appropriate. All of the considerations urged upon us by the representative of the respondent are considerations on which the respondent and intervener could have acted on their own to consolidate the existing bargaining units during collective bargaining. They have not done so. That inaction speaks to the issue before us. In the circumstances, we see no reason to override the very fundamental principle that a trade union should not be deprived of its bargaining rights with respect to a particular bargaining unit unless a majority of employees *in that unit* signify that they no longer wish it to represent them. The intervener's right to represent employees at the North Unit, and the right of those employees to be represented by the intervener, should not be brought to an end because of an expression of contrary wishes by employees at the South Unit.

In *Tele-Direct (Publications) Inc.* (Board file numbers 1562-92-R and 1563-92-R, March 4, 1993, unreported) the Board observed as follows, at paragraph 4 and following:

4. As indicated earlier, although the parties clearly disagree as to its application in the present case, there is no real dispute as to the Board's jurisprudence and general approach in these types of cases. As the Board observed in *Milltronics Limited*, [1980] OLRB Rep. Jan. 56:

On an application for certification the Board is required to determine the unit of employees which is appropriate for collective bargaining. Where one trade union is seeking to displace another, however, the established bargaining unit structure is *prima facie* appropriate - particularly if it has been established by the parties themselves through collective bargaining, and continued through the years over several collective agreements. Indeed, what better evidence of "appropriateness" could there be than a pre-existing bargaining structure which the parties have developed them-



selves and have adapted to their own bargaining circumstances. The Board has been reluctant to fragment an existing bargaining structure or to “carve out” groups of employees from that structure.

5. Thus, in situations not entirely dissimilar to the one under consideration, the Board has declined to carve out single locations from an established multi-location or province-wide bargaining unit on a displacement application, even where the proposed bargaining unit might otherwise be one the Board might find to be appropriate (see *The Canadian Red Cross Society Blood Transfusion Service*, [1978] OLRB Rep. May 408; *Bestview Holdings Limited*, [1981] OLRB Rep. Oct. 185) [sic]. Conversely, the Board has not permitted a union to expand an existing bargaining unit in a displacement application even where the proposed bargaining unit is one which the Board might otherwise find appropriate (see *Toronto East General and Orthopaedic Hospital, Inc.*, [1981] OLRB Rep. Feb. 225).
6. Perhaps the most comprehensive consideration of the issue can be found in *Ontario Hydro*, [1980] OLRB Rep. June 882 at paragraph 22:

... The first issue is whether the [existing unit] ... is the only appropriate unit and in support of this proposition the respondent and intervener directed our attention to a number of decisions including: *Roland Lefebvre Limited* [1966] OLRB Rep. May 140; *Toronto Star Limited* [1974] OLRB Rep. July 416; *Harding Carpets Limited* [1975] OLRB Rep. July 566 (where the applicant successfully intervened on the basis of the doctrine); *The Wellesley Hospital* [1976] OLRB Rep. Feb. 46; *The Canadian Red Cross Society Blood Transfusion Service* [1978] OLRB Rep. May 408. This principle is not to be lightly dismissed. Where parties have established the viability of a bargaining unit through actual bargaining and where the history of such bargaining has been relatively satisfactory, this Board ought not to encourage fragmentation. Moreover, in these cases, the Board is not dealing with employees who are unrepresented by a trade union. Thus, more concern can be given to the most viable unit from a collective bargaining viewpoint without the risk of impeding the initial organization of employees attempting to engage in bargaining. But the principle cannot be without its exceptions. Section 48 [now section 56] of the Act clearly envisages displacement applications which are less extensive than pre-existing bargaining units. While there is a strong presumption in favour of the incumbent trade union's bargaining unit, the Board is willing to entertain evidence and submissions on why the status quo ought not to be maintained. The incumbent trade union may clearly have failed to represent a distinct and cohesive group adequately, a problem that has sometimes reared its head in the relationship of skilled and unskilled employees. This problem of unsatisfactory representation may be combined with a capacity in the employer to tolerate somewhat greater fragmentation, particularly if the smaller unit sought can meet the principles of appropriateness generally applied to certification cases. In the case at hand, the applicant indicated its intent to adduce evidence on the distinctive nature of Hydro's nuclear energy facilities; on the common training and conditions of employment of the affected employees; and on the manner in which they have been represented by CUPE Local 1000. The unit relied upon by the intervener and the employer is not one that the Board would normally grant and the intervener, itself, never had to organize all of the affected employees. Against this background, we are not prepared to say at this time that the applicant will be unable to make out a case justifying the unit it has requested. On the other hand, the applicant's chances for success based on it answers to the Board's probing and against the background of all that we have reviewed above, cannot be characterized as substantial.

7. After considering the foregoing passage the Board in the *Bestview* case, *supra*, added the following at paragraph 15:

To these considerations, a final one may be added: the importance of certainty and predictability in the processing of representation applications. It is in the interests of all parties, including the applicant union, to know with some certainty the bargaining unit configuration which the Board will likely find to be appropriate. It is that group of employees which a raiding union must seek to organize, and within which it must

establish majority support. The practical value of the rule that a raiding union must usually take the bargaining unit as it finds it, is that it clearly defines the relevant employee grouping for organizing purposes. If the Board were to readily depart from this approach, there would be no such certainty; and the prospect that temporary minority dissatisfactions could be translated into fragmentation of an established unit, would simply encourage inter union rivalry and complicate the litigation where one union is seeking to displace another. Thus, there are real practical and administrative advantages to the rule that the existing bargaining structure should generally be preserved.

Thus, while the rule referred to is not inviolable, it is clear that there is a heavy onus on an applicant to establish clear and compelling reasons to depart from it, as the scepticism expressed by the Board regarding the applicant's chances of success in the *Ontario Hydro* case, *supra*, demonstrates. The present applicant submits that it can establish that clear and compelling case. Even accepting all of the facts alleged by the union as true, we are not persuaded.

It is in the context of the principles outlined above that we make the following determination.

20. In all applications for certification, the Board, pursuant to s.6(1) of the *Labour Relations Act*, is required to determine the unit of employees that is appropriate for collective bargaining. The Board's jurisprudence referred to above identifies three separate concerns which the Board has recognized as being significant when determining the appropriate bargaining unit in an application for certification where an incumbent trade union is at risk of being displaced. In essence, the concerns can be summarized as follows:

- (a) that those employees who are in the incumbent's bargaining unit be the employees who determine whether the incumbent is displaced;
- (b) that there should be, as a general principle, avoidance of fragmentation of an existing bargaining structure; and
- (c) that there should be certainty and predictability in the processing of representation applications. Should the Board readily depart from the "general rule" this certainty (which is of significant labour relations value) would be lost.

Historically, each of these concerns has been recognized and reflected by the Board by reference to a somewhat narrow range of situations where the long and well-established practice of determining a 'mirror image' bargaining unit to be appropriate does not apply. That is, the Board's policy that the applicant must seek representation rights in a unit which "mirrors" that of the incumbent is described by Board jurisprudence as a "strong presumption", with the applicant bearing "a heavy onus" to establish "clear and compelling" reasons for departure. The strength of the Board's policy reflects the significance of the concerns identified above. However, the Board's practice is not, as was noted in *Ontario Hydro, supra*, without its exceptions. On the facts of any one case, it may well be that another bargaining unit is appropriate.

21. We commence our analysis of this case with the observation that the second concern identified above is not present in the instant case, as the unit urged upon us by the applicant as being an appropriate unit for bargaining is not smaller in either geographic scope or in terms of the employees which the applicant wishes to represent. There is no "carving out" of certain employees nor is there an "expansion" of the unit beyond what is already in place as two separate bargaining units. That is, the unit proposed by the applicant is a mirror image of the *two* current units com-

bined and does not seek to include any other employees employed by Red Cross. In fact, the unit proposed by the applicant would *reduce* fragmentation at the work place.

22. The Board has, previously, dismissed applications for certification where the applicant has sought a bargaining unit which extends beyond that represented by the incumbent union. (See, for example, *Toronto East General and Orthopaedic Hospital, Inc.* [1981] OLRB Rep. Feb. 225 and *Barnet-McQueen Co. Ltd.* (1959), 59 CLLC 18,139.) In both of these decisions, the individuals who would be “swept into” the bargaining unit were unrepresented, and the Board expressed concern that a union not be permitted to expand its representation rights to encompass these individuals as a result of its strength of support in the established bargaining unit. These are, of course, legitimate concerns. In the case before us, however, no such concerns are identified, in as much as the applicant’s proposed “expansion” would encompass only those who are currently represented by the Association, and does not include unrepresented employees. In the circumstances before us, we do not believe that this concern is of sufficient weight to lead us to conclude that the applicant’s proposed unit is inappropriate for collective bargaining.

23. With respect to the first concern identified above, there are, on the facts before us, somewhat particular circumstances which minimize the effect of this concern. In this case, the employees in the bargaining units, though in separate units, are, to a significant extent, treated by the employer and the Association as one group of individuals. That this is so is reflected by the interconnection of full-time and part-time employees in matters relating to the Labour Management Committee, the negotiation of collective agreements and, of course, the ratification of the collective agreements. The fact of the matter is that all of the employees, both part-time and full-time, have regularly had the opportunity to significantly affect their colleagues in the *other* bargaining unit when voting on tentative collective agreements. In the circumstances of this case, we do not believe that this concern is of such significance to lead us to conclude that the unit applied for is not one appropriate for bargaining.

24. With respect to the third area of concern, that of certainty and predictability, such a concern deserves great weight. However, we do not believe that we are in any way qualifying the Board’s general policy by our decision in this case. We are merely determining a case which we believe is an exception to the Board’s general practice. In the typical application for certification in which an incumbent union may be displaced, the Board’s long-standing practice would apply unless “clear and compelling” reasons are demonstrated for another result.

25. What “clear and compelling” reasons exist in this case to lead us to conclude that the Board’s general practice should not be followed? In *Bestview Holdings Limited*, [1983] OLRB Rep. Feb. 185, the Board identified some reasons which could justify the alteration of the status quo, at para. 16:

“Such reasons might include inadequacy of representation by the incumbent union or collective bargaining difficulties generated by the established structure”.

There is no evidence or suggestion in this case that the Association has not adequately represented the support staff of Red Cross.

26. Our reasons for departing from the Board’s long-standing policy in this case can be fairly described as reflecting “collective bargaining difficulties generated by the established structure”. The two collective agreements which have been negotiated by the Association and Red Cross contain, to a great extent, terms which are interconnected. As an example, Articles 14.08 and 14.09 of the *part-time* collective agreement provide as follows:



14.08 A part-time or temporary employee changing her status to regular full-time, shall be credited with seniority earned as a part-time or temporary employee.

14.09 A regular full-time employee who after the date of signing of this Agreement changes her status to either part-time or temporary shall be credited with seniority based on her accumulated hours worked as a regular full-time employee at the rate of 1950 hours per year for all the years she worked as a regular full-time employee. Any fraction of a year worked as a regular full-time employee shall be pro-rated by 1950 hours per year.

Similarly, Articles 2.02(a) and (b) of the *part-time* collective agreement provide as follows:

- 2.02 a) Temporary full-time employees shall be entitled to preferential consideration in filling up permanent full-time vacancies within the bargaining unit to which they are qualified, as against outside applicants. All full-time temporary employees shall upon commencement of their employment be provided with a letter setting forth the duration of their employment.
- b) Temporary full-time employees on staff at the date of signing of this agreement shall have the option to continue to receive the benefits they are currently enjoying under Articles 13, 14, 24.01 and 26 of the full-time agreement. It is understood that if an employee chooses to continue with such benefits under the full-time collective Agreement then Articles 12.01 and 21.01 a) of Appendix "A" shall not be applicable to such an employee.

27. No comparable provisions are contained in the full-time agreement. These articles illustrate the interconnected nature of the part-time and full-time units, and the inter-relatedness of the two collective agreements negotiated by the Association and Red Cross. The parties have agreed in these collective agreements to provisions which could be altered or eliminated so as to negatively affect employees in the *other* bargaining unit should the bargaining agent in any one of the two units change. This type of situation constitutes, in our view, a "collective bargaining difficulty" justifying the appropriateness of the applicant's proposed bargaining unit. To adopt the submissions of the Association and Red Cross would be to significantly increase the chance that negotiated rights for these employees could be lost. These collective bargaining difficulties can be avoided if the full and part-time employees are considered by the Board to constitute an appropriate bargaining unit in the circumstances.

28. Accordingly, in the circumstances of this case we conclude that the applicant's unit is appropriate for collective bargaining.

**DECISION OF BOARD MEMBER JAMES A RONSON; December 15, 1994**

1. I disagree with the majority. Following long established Board practice the applicant Union must accept the situation as it presently exists; - that there are two separate and distinct bargaining units comprised of full-time and part-time employees respectively.

2. I take this position because:

- (a) the employer has always treated its employees as if they were members of two bargaining units;
- (b) the bargaining units were created by two certificates of the Board - one issued for the full-time employees in 1976 and the other for part-time employees in 1985;

- (c) these have been separate collective agreements to date with separate and distinct recognition clauses;
- (d) there are separate seniority lists and there are no bumping rights between the units;
- (e) "temporary" full-time employees have the first right to a new opening in the full-time unit;
- (f) there is a clear distinction concerning vacation entitlement between the two units;
- (g) if required, there are *two* appointments of a conciliator during bargaining; and
- (h) in *K-Mart Canada Limited* (supra) the Board found that there were two units and the evidence was not as cogently convincing as in this case.

3. It is manifest that the parties have written two contracts since 1985. It would be unfair, at this stage, to throw all the employees into the common pot and thus allow one group to have the ability to out-vote the other.

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**2871-94-U** Teamsters, Chauffeurs, Warehousemen and Helpers Union Local No. 880, Applicant v. **Trican Materials Ltd.** and Dunhill Contracting Ltd., Responding Parties

**Discharge - Discharge for Union Activity - Practice and Procedure - Unfair Labour Practice - Union filing unfair labour practice complaint under section 92.2 of the Act - Employer failing to reply to union's application, but attending at Board on day of hearing - Board not permitting employer additional time to file response - Board determining matter solely on materials filed by applicant - Application allowed and reinstatement with compensation ordered**

**BEFORE:** *D. L. Gee*, Vice-Chair, and Board Members *R. W. Pirrie* and *D. A. Patterson*.

**APPEARANCES:** *J. James Nyman* and *Gary Kitchen* for the applicant; *Dave Mummery* and *Jacob Michael* for the responding parties.

**DECISION OF THE BOARD;** December 13, 1994

1. This is an application pursuant to section 91 of the *Labour Relations Act*. The applicant has alleged that the responding parties terminated the employment of Peter MacDonald, Fred Andary and Ike Andary for reasons related to their trade union activity. It is alleged that, in doing so, the responding parties violated sections 65, 67, 71, 82 and 91(7) of the Act.

2. In conjunction with the present application, the applicant applied under section 91.1 of the Act for an interim order reinstating the three employees in question. The interim application

was heard by a differently constituted panel of the Board (the “interim panel”) on November 16, 1994. At the conclusion of the hearing the interim panel ordered the responding parties to reinstate Mr. MacDonald on an interim basis. The interim panel issued written reasons for its order on November 17, 1994.

3. The interim panel’s decision of November 17, 1994 indicates that, as of the morning of the hearing of the interim application, the responding parties had not filed a response nor did they have any reasonable excuse for having failed to do so. Accordingly, after determining that the responding parties had no intention of complying with the Board’s Rules of Procedure, even if provided with additional time to do so, the interim panel applied Rules 19 and 20 and determined the matter based solely on the applicant’s materials.

4. As a result of comments made by Mr. Michael, the responding parties’ representative, following the interim panel’s reading of its order, the interim panel sought confirmation from Mr. Michael that he understood the Board’s order and reviewed the legal regime surrounding the enforcement of Board orders. It is not disputed that, as of November 22, 1994, the date on which the instant application was heard, the responding parties had failed to reinstate Mr. MacDonald as required by the order of the interim panel.

5. As of the morning of the hearing of the instant matter, the Board had not received a response or any documentation from the responding parties. Although Mr. Michael asserted that the responding parties’ response and documents were faxed to counsel for the applicant and the Board at approximately 7:35 p.m. the previous evening, no such fax had been received by the Board. Mr. Michael did not have sufficient copies of the response and documents (which measured approximately one inch thick) with him on the morning of the hearing to provide to the panel. Counsel for the applicant acknowledged that the response and documents had been faxed to his office at 7:30 p.m. the previous evening but requested, in light of the fact that the responding parties had failed to file their response and documentation with the Board as required by the Board’s Rules of Procedure, that the Board refuse to accept the responding parties’ materials on the morning of the hearing and proceed to determine the matter based on the applicant’s materials.

6. In support of his request, counsel submitted that, as a result of the Board proceedings in connection with the interim application, the responding parties were well aware of the possible ramifications of their failing to file a response as required by the Board’s Rules. It was argued that the Board should consider the fact that the responding parties were in contempt of a Board order and had repeatedly failed to comply with the Board’s Rules in determining whether to relieve against the application of the Rules. Finally, counsel argued that, the fact that the hearing was an expedited one and Mr. MacDonald remained out of work pending a final determination by the Board, weighed in favour of expeditiously completing the hearing which could not be done if the Board accepted the responding parties’ late filings. The applicant relied on *G. B. Metals Limited*, [1993] OLRB Rep. June 503; *Lakeridge Acoustics*, [1993] OLRB Rep. Feb. 137; and *Central Forming & Concrete Inc.*, [1994] OLRB Rep. July 805 as well as the Board’s *Rules of Procedure*, in support of its request.

7. Mr. Michael advised the Board that he had been told by the interim panel that the responding parties had until November 21, 1994 in order to file their materials relating to the instant application. Mr. Michael asserted that the Board should not determine this matter in the absence of all of the facts and that the Board would not have all the facts unless it considered the responding parties’ materials.

8. In reply, counsel for the applicant asserted that the interim panel did not advise Mr. Michael that the responding parties had until November 21, 1994 to file their materials and, in any



event, the Board's Rules do not provide for service by fax. Counsel reiterated that it was imperative that the Board rule on this matter as expeditiously as possible. The applicant specifically requested that the hearing be expedited to ensure that end. To allow the responding parties to file materials this late would likely result in an adjournment and defeat the effect of having expedited the hearing. The matter was especially urgent due to the fact that the responding parties had refused to comply with the Board's interim order that Mr. MacDonald be reinstated pending determination of the instant application.

9. The Request to Expedite Hearing (Form A-61) served by the applicant on the responding parties on November 10, 1994 clearly sets out, under the heading "IMPORTANT NOTICE TO RESPONDING PARTY", in bold faced type, that a response must be filed with the Board not later than five days after the request to expedite was received and warns as follows:

3. THE BOARD'S RULES OF PROCEDURE DESCRIBE HOW A RESPONSE MUST BE FILED WITH THE BOARD, WHAT INFORMATION MUST BE PROVIDED AND THE TIME LIMITS THAT APPLY. THE RULES OF PROCEDURE ALSO CONTAIN SPECIAL RULES CONCERNING REQUESTS TO EXPEDITE CERTAIN CASES AND THE BOARD'S POWER TO EXPEDITE THOSE CASES.
4. IF YOU DO NOT FILE A RESPONSE TO THE APPLICATION OR OTHER DOCUMENT IN THE WAY REQUIRED BY THE RULES, THE BOARD MAY NOT PROCESS THE RESPONSE, YOU MAY BE DEEMED TO HAVE ACCEPTED ALL THE FACTS STATED IN THE APPLICATION, AND THE BOARD MAY DECIDE THE CASE ON THE MATERIAL BEFORE IT WITHOUT FURTHER NOTICE.
5. COPIES OF THE BOARD'S RULES OF PROCEDURE MAY BE OBTAINED FROM THE BOARD'S OFFICE LOCATED ON THE 4TH FLOOR AT 400 UNIVERSITY AVENUE, TORONTO, ONTARIO, M7A 1V4 (Tel. (416) 326-7500).

10. The applicable Rules of Procedure provide as follows:

9. Applications, responses, membership evidence, evidence of objection and re-affirmation and evidence of employee wishes concerning representation may not be filed by facsimile transmission. Only other documents which are short and urgent may be sent to the Board by facsimile transmission.

Requests to Expedite Hearings under Section 92.2

95. A responding party must file its response to the application under section 92.2 of the Act not later than five (5) days after the request for expedition was delivered. A responding party must file its response to the application under sections 94, 95 or 137 of the Act not later than two(2) days after the request for expedition was delivered.

96. Before filing the response with the Board, the responding party must deliver a properly completed copy of the response to the applicant.

97. At the time of filing, the parties must verify in writing to the Board that they have delivered the request, complaint and response as required by these Rules.

98. In order to expedite proceedings, the Board may, on such terms as it considers advisable, shorten or lengthen any time period, change any filing or delivery requirement, schedule a hearing on short notice, or make or cause to be made such examination of records and such other inquiries as it considers necessary in the circumstances.

Where Rules Not Complied With

17. An application or response may not be processed if it does not comply with these Rules.
18. The Board may decide an application without further notice to anyone who has not filed a document in the way required by these Rules.
19. If a party receiving notice of an application does not file a response in the way required by these Rules, he or she may be deemed to have accepted all of the facts stated in the application, and the Board may decide the case upon the material before it without further notice.
20. No person will be allowed to present evidence or make any representations at any hearing about any material fact relied upon which the Board considers was not set out in the application or response and filed promptly in the way required by these Rules, except with the permission of the Board. If the Board gives such permission, it may do so on such terms as it considers advisable.
21. The Board may also require a person to provide any further information, document or thing that the Board considers may be relevant to a case.
22. The Board may relieve against the strict application of these Rules where it considers it advisable.

11. The Board's Rules and the "Important Notice to Responding Party" set out in the Request to Expedite Hearing clearly indicate the date by which a responding party is required to have filed its response as well as the possible ramifications for failing to do so. In addition, in the instant case, we are satisfied that the responding parties were well aware of the Board's Rules and the importance of filing their response in accordance therewith. In light of the responding parties' heretofore disregard for the Board's orders and its Rules as well as the compelling need to resolve the instant dispute as expeditiously as possible, the Board ruled orally that it would not exercise its discretion so as to permit the responding parties additional time for the filing of their response. The Board ruled that it would determine the matter based solely on the materials filed by the applicant and provided both parties with an opportunity to make submissions on whether the facts set out therein were sufficient to support a finding that the responding parties' termination of Peter MacDonald, Ike Andary and Fred Andary violated the Act.

The Merits

12. The facts set out in the application establish that Mr. MacDonald commenced employment with the responding parties in July 1994. On or about mid September 1994 the applicant commenced its organizing campaign concerning a group to the responding parties' employees. Mr. MacDonald was an active union supporter. The applicant filed an application for certification pertaining to each of the responding parties on September 20, 1994. The applicant also filed a related employer application and an unfair labour practice complaint. These matters were scheduled to be heard together on October 31, 1994. On October 31, 1994 Mr. MacDonald, Ike Andary and Fred Andary attended at the Board, under subpoena, in order to testify in support of the applicant. Although the matters were settled such that a hearing was not held, the fact that the three employees in question supported the applicant became known to the responding parties during the course of the settlement discussions which took place on October 31, 1994.

13. The applicant's materials establish that, on November 3, 1994, Mr. MacDonald's first day of work following the October 31, 1994 Board meeting, Mr. MacDonald was given two unjustified written reprimands. On November 4, he was given a record of employment on which it was indicated that he had quit. On November 7, in response to enquiries he made as to why he had

been provided with a record of employment, he was told that he no longer had a job with the responding parties.

14. On November 7 and 10 respectively, and continuing thereafter, Ike and Fred Andary were told that the responding parties did not have any work for them to perform. As of November 7, 1994 one new employee was working for the responding parties performing work which Ike Andary normally performed. As of November 10, 1994 there were two new employees working for the responding parties performing work which Ike and Fred Andary normally performed. On November 11, 1994 the responding parties received copies of written statements prepared by Ike and Fred Andary in support of the interim application. On November 14, 1994 Fred Andary attended at the responding parties' premises to inquire about the availability of work. He was told by Mr. Desjardins, an individual who the applicant understands to be a management employee, that, because of their statements, Ike and Fred Andary would not be working with the responding parties again.

15. Having regard to such facts and section 91(5) of the Act the Board is satisfied that the applicant has established that Peter MacDonald, Ike Andary and Fred Andary were terminated from their employment with the applicant contrary to sections 65, 67 and 82 of the Act. The Board hereby confirms the following oral ruling which was rendered at the conclusion of the hearing on November 22, 1994:

The Board hereby directs that Trican Materials Ltd. and Dunhill Contracting Ltd. immediately reinstate Peter MacDonald, Ike Andary and Fred Andary to their previous positions without loss of service or seniority.

The Board directs that Trican Materials Ltd. and Dunhill Contracting Ltd. fully compensate Peter MacDonald, Ike Andary and Fred Andary for all losses arising out of their improper discharge including compensation and benefits.

The Board will remain seized to deal with any issues arising out of the implementation of this order.

16. The Board has received notice from the applicant that the parties have been unable to agree on the quantum of damages owing to Messrs. MacDonald, Andary and Andary. Accordingly, the Registrar is directed to relist this matter for hearing for the purpose of dealing with this issue. This panel is seized.

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**2765-94-R** Rebecca Millar and Stacy Fenn, Applicants v. Retail Wholesale Canada, Canadian Service Sector Division of United Steelworkers of America, Local 448, Responding Party v. **Wendy's Restaurants of Canada Inc.**, Intervenor

**Petition - Termination - Board finding that signatures on reaffirmations signifying voluntary expression of those employees in support of union - Less than forty-five per cent of employees, as of terminal date, applying for termination of bargaining rights - Application dismissed**

**BEFORE:** *Gail Misra*, Vice-Chair.

**APPEARANCES:** *Rebecca Millar and Stacy Fenn* for the applicants; *Robert McKay, Bob Low, Janet Christie and Tony Matthews* for the responding party; *C. G. Riggs, D. M. Barbini, D. Newcombe and D. Orlando* for the intervenor.

**DECISION OF THE BOARD;** December 14, 1994

1. The applicants have applied under section 58 of the *Labour Relations Act* for a declaration that the responding party no longer represents the employees of the intervenor, Wendy's Restaurants of Canada Inc., in a bargaining unit for which the responding party is the bargaining agent.

2. The parties agree that the applicants have filed the termination application in a timely fashion. The application was supported by three petitions bearing a total of 24 signatures. Of those signatures, 20 coincide with employees in the thirty-seven person bargaining unit. If these signatures are the voluntary signatures of the employees, the applicants would have filed the signatures of not less than forty-five per cent of the employees in the bargaining unit.

3. However, prior to the terminal date set for this application, the Board received two counter-petitions, or statements of reaffirmation, in support of the responding party (also referred to as the "union"). These documents bear the names of 22 employees of the intervenor employer, 21 of which coincide with names of employees in the bargaining unit. The preamble to the documents read as follows:

We, the undersigned bargaining unit members of Wendy's Restaurant in London at 243 Oxford St. E., confirm that we wish to be represented by Retail, Wholesale Canada, Canadian Service Sector Division of the United Steelworkers of America, Local 448 as our bargaining agent and we hereby withdraw our names on any document to the contrary.

The reaffirmation documents indicate on their face that they were circulated between November 9 and November 13, 1994, and were sent to the Board by registered mail on November 14, 1994, the terminal date set for this application. These documents contain the names of seven persons who appear to have earlier affixed their signatures to the original petitions in support of the termination application. As required by section 105(2)(j.1) of the Act, and the Board's Rules of Procedure (specifically, Rules 53, 55, and 56), the reaffirmation documents are signed by each employee concerned, indicate the date upon which each signature was obtained, the name of the employer, and the name of the union involved.

4. The Board has consistently ruled that when statements of reaffirmation are filed within the time requirements set out in the Act and Rules, that evidence must be considered by the Board in the exercise of its authority under section 58(3) of the Act (see *V.S. Services Q.E. Hospital*, [1978] OLRB Rep. March 323, and the cases cited therein). Since the reaffirmations might have

been signed subsequent to the petition, the signatures on the reaffirmations, if voluntary, provide evidence of the most recently expressed wishes of those particular employees. Seven employees who signed reaffirmations also signed the petition. If the reaffirmations are voluntary, then only fourteen employees, as of the relevant time, were seeking to terminate the bargaining rights of the responding party, assuming the petition signatures are also voluntary. This number of employees is less than forty-five per cent of the bargaining unit. It thus appeared necessary to first inquire into the voluntariness of the reaffirmation. In the event that the Board did not find the counter-petition to be a voluntary expression of the wishes of the employees in the bargaining unit, the union reserved its right to ask the Board to consider its position that the petition in support of the termination application was involuntary.

5. The union called Janet Christie and Tony Matthews to give evidence in support of the counter-petitions. The intervenor and applicants called no evidence.

6. Janet Christie is the Chief Steward for the union at this Wendy's location. She gave evidence in support of the voluntariness of the statement of reaffirmation she handled and which contained twenty-one signatures of employees. Her evidence satisfies the Board that the origination and preparation of the counter-petition was properly undertaken by the union staff, and that Ms. Christie circulated the statement of reaffirmation in a bona fide manner. The Board is satisfied that there was no management involvement in the circulation of the document, and that those employees who signed the document were not threatened, intimidated, or coerced into doing so.

7. Tony Matthews is a co-Steward for the union at the Wendy's location in question. Mr. Matthews gave evidence in support of the one signature he had collected on the statement of reaffirmation he handled. I am satisfied that the counter-petition was originated and prepared by the union staff, was circulated by Mr. Matthews, and that he collected the one signature on his document without threats, intimidation, or coercion. I am also satisfied that there was no management involvement in the circulation of Mr. Matthews' document.

8. Counsel for the employer argued that the Board should disregard Ms. Christie's evidence as it lacked reliability. In particular, it was argued that since she made no notes contemporaneous with her collection of signatures, that her recollection was faulty. The Board does not require persons who collect signatures on petitions of any kind to take notes. The Board assesses the evidence given by witnesses and makes findings of fact, whether or not they take notes. On the whole, I found Ms. Christie to be an honest and reliable witness who was able to give sufficient evidence about each signature she collected to establish that those employees voluntarily signed the reaffirmation document signifying their wish to continue to be represented by this responding party. As the Board stated in *Mitten Industries Galt Limited on behalf of its Affiliate Company, Field-Price Ltd.*, [1976] OLRB Rep. March 76, at paragraph 5:

... The most reliable evidence of the true wishes of the employees is the latter signed statements which in effect revoke support for the application for termination and expresses support for the incumbent trade union.

9. It was also argued on behalf of the employer that the union had failed to establish continuity in the handling of the Christie counter-petition. Therefore, the argument went, the Board should find there is a deficiency in the evidence which casts doubt on the completeness, accuracy, reliability and credibility of the Christie document. The facts giving rise to the employer's concern were as follows. Ms. Christie worked the 8 p.m. to 3:30 or 4:30 a.m. shift. She had no locker or safe area in which to put her valuables at work. Prior to her shift beginning and after she had collected some employee signatures, on November 9, 10, and 12, 1994, Ms. Christie had given her counter-petition to her brother-in-law, Harley Christie, to take home for safe-keeping. Since Har-

ley Christie resides with Ms. Christie and her family, upon her return home after her shift, she retrieved the document from Mr. Christie and kept it with her. Harley Christie does not work at Wendy's, and does not know any person in management at Wendy's.

10. There is nothing before me to suggest how Mr. Christie's handling of the counter-petition casts doubt on the completeness, accuracy, reliability, or credibility of the document. There were no signatures about which Ms. Christie did not give evidence, there was no suggestion that Mr. Christie had himself collected any of the signatures, he does not work for this employer, and it was not contested that he did not know anyone in management with this employer. In any event, in considering reaffirmations in the context of a termination application, the Board does not usually expect to find any employer support. I adopt the Board's statement in *Canadian Pacific Hotels*, [1985] OLRB Rep. Oct. 1445, wherein it said:

... Petitions seek either to prevent a union from acquiring bargaining rights or to extinguish bargaining rights which it already holds. Counter-petitions, on the other hand, seek to defend a union's attempt to acquire bargaining rights or to defend the bargaining rights which it already holds. Therefore, successful counter-petitions operate against the presumed preference of employers not to have to bargain with unions. That being the case, in order for the Board to make a finding that it would be reasonable for employees to perceive their employer as supporting a counter-petition, there would have to be evidence that the employer had made known to the employees by its actions that it preferred to deal with the union which would benefit from the counter-petition. ...

In this particular case, in the absence to any evidence to the contrary, I conclude that there is no employer support for the counter-petition.

11. The issue for determination by the Board in this case is whether the Board is satisfied on the evidence that the counter-petitions are voluntary. I am satisfied, on the basis of all of the evidence before me, that the counter-petitions represent the voluntary expression of the wishes of the employees who signed them.

12. As outlined earlier, seven employees who signed reaffirmations had previously signed the petitions in support of the application for termination of the union's bargaining rights. Having found those seven signatures to signify the voluntary expression of those employees in support of the union, I find that less than forty-five per cent of the employees of the bargaining unit have, as of the assessment date, applied for the termination of the responding party's bargaining rights. It is therefore unnecessary to consider the voluntariness of the petitions in support of the application, and the application is hereby dismissed.













## CASE LISTINGS NOVEMBER 1994

	PAGE
1. Applications for Certification .....	319
2. Applications for Combination of Bargaining Units.....	330
3. Applications for First Contract Arbitration .....	331
4. Applications for Declaration of Related Employer.....	331
5. Sale of a Business .....	332
6. Union Successor Rights .....	332
7. Section 64.2 - Successor Rights/Contract Services .....	332
8. Applications for Declaration Terminating Bargaining Rights.....	333
9. Applications for Declaration of Unlawful Strike (Construction Industry) .....	333
10. Application - Unlawful Agreement (s.137(3)) .....	333
11. Applications Concerning Replacement Workers.....	333
12. Complaints of Unfair Labour Practice .....	333
13. Applications for Interim Order.....	338
14. Applications for Consent to Prosecute.....	338
15. Applications for Consent to Early Termination of Collective Agreement .....	338
16. Jurisdictional Disputes.....	339
17. Applications for Determination of Employee Status.....	339
18. Complaints under the Occupational Health and Safety Act.....	339
19. Construction Industry Grievances .....	339
20. Applications for Reconsideration of Board's Decision .....	344





# APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING NOVEMBER 1994

## APPLICATIONS FOR CERTIFICATION

### Bargaining Agents Certified Without Vote

**3956-93-R:** Ontario Public Service Employees Union (Applicant) v. Muki Baum Association for the Rehabilitation of Multi Handicapped Inc. (Respondent)

Unit: "all employees of the Muki Baum Association for the Rehabilitation of Multi Handicapped Inc. in the Municipality of Metropolitan Toronto, save and except Supervisors, persons above the rank of Supervisor, Executive Assistant, Payroll Administrator, Senior Therapists, Coordinator of Community Outreach, Social Workers, office and clerical and administrative employees and employees in bargaining units for which any trade union held bargaining rights on February 16, 1994" (93 employees in unit) (*Having regard to the agreement of the parties*)

**0959-94-R:** The Millwright District Council of Ontario, United Brotherhood of Carpenters and Joiners of America on its own behalf and on behalf of Local 1425 (Applicant) v. Brie Construction Inc. (Respondent) v. Northern Ontario Workers' Association (Intervener)

Unit: "all millwrights and millwright apprentices in the employ of Brie Construction Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all millwrights and millwright apprentices in the employ of Brie Construction Inc. in all sectors of the construction industry excluding the industrial, commercial and institutional sector within a radius of 81 kilometers (approximately 50 miles) of the Timmins Federal Building, save and except non-working foremen and persons above the rank of non-working foreman" (25 employees in unit)

**1162-94-R:** Hotel Employees Restaurant Employees Union, Local 75 (Applicant) v. Toronto, Airport Novotel (Respondent)

Unit: "all employees of Toronto, Airport Novotel at 135 Carlingview Drive, Etobicoke, save and except supervisors, persons above the rank of supervisor, sales, office and clerical staff" (53 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

**1433-94-R:** Local Union 47 Sheet Metal Workers' International Association (Applicant) v. 2714744 Canada Inc. c.o.b. N C Sheet Metal (Respondent)

Unit: "all journeymen sheet metal workers and registered sheet metal apprentices in the employ of 2714744 Canada Inc. c.o.b. N C Sheet Metal in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman and all journeymen sheet metal workers and registered sheet metal apprentices in the employ of 2714744 Canada Inc. c.o.b. N C Sheet Metal in all sectors of the construction industry in the Regional Municipality of Ottawa-Carleton, and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

**1755-94-R:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 46 (Applicant) v. Norstar Mechanical Ltd. (Respondent)

Unit: "all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Norstar Mechanical Ltd. in the industrial, commercial and institutional sector of the construction industry in the

Province of Ontario, and all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Norstar Mechanical Ltd. in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (10 employees in unit)

**1936-94-R:** Labourers' International Union of North America, Local 1059 (Applicant) v. 1016784 Ontario Limited c.o.b. as A.I.M.E.S. (Respondent)

Unit: "all maintenance cleaners of 1016784 Ontario Limited c.o.b. as A.I.M.E.S. at 1100 Greenvalley Road in the City of London, save and except supervisory personnel, persons above the rank of supervisory personnel, skilled trades personnel, engineering services personnel, office, clerical and sales staff" (10 employees in unit) (*Having regard to the agreement of the parties*)

**1977-94-R:** Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, Local 351 (Applicant) v. 772427 - O/L. CDA. Inc. O/A c.o.b. Quality Suites by Journey's End (Respondent)

Unit: "all employees of 772427 - O/L. CDA. Inc. c.o.b. as Quality Suites by Journey's End at 262 Carlingview Drive, Etobicoke, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff, accounting staff, front desk staff, and students employed during the school vacation period" (57 employees in unit)

**1990-94-R:** International Brotherhood of Electrical Workers, Local Union 1687 (Applicant) v. Delgro Electrical Ltd. (Respondent)

Unit: "all electricians and electricians' apprentices in the employ of Delgro Electrical Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all electricians and electricians' apprentices in the employ of Delgro Electrical Ltd. in all sectors of the construction industry, excluding the industrial, commercial and institutional sector, within a radius of thirty-three kilometers (approximately twenty miles) of the North Bay Post Office, save and except non-working foremen and persons above the rank of non-working foreman" (8 employees in unit)

**2037-94-R:** The Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Applicant) v. Bruno Plumbing & Contracting Inc. (Respondent)

Unit: "all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Bruno Plumbing & Contracting Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Bruno Plumbing & Contracting Inc. in all sectors of the construction industry in the County of Simcoe and the District Municipality of Muskoka, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (7 employees in unit)

**2113-94-R:** International Association of Machinists and Aerospace Workers (Applicant) v. B A Banknote a division of Quebecor Printing Inc. (Respondent)

Unit: "all Security Guards employed by B A Banknote a division of Quebecor Printing Inc. at 975 Gladstone Avenue in the City of Ottawa, save and except Security Supervisors and persons above the rank of Security Supervisor" (7 employees in unit)

**2229-94-R:** IWA - Canada (Applicant) v. Kent Trusses Limited (Respondent)

Unit: "all employees of Kent Trusses Limited in the Township of Strong, save and except foremen, persons

above the rank of foreman, office, clerical and sales employees, engineering and designing employees, and students employed during periods of school vacation” (46 employees in unit)

**2273-94-R:** Service Employees International Union, Local 204 Affiliated with the A.F. of L., C.I.O., C.L.C. (Applicant) v. Digs for Kids (Respondent)

Unit: “all employees of Digs for Kids, in the Region of Peel, save and except supervisors/co-ordinators, persons above the rank of supervisor/co-ordinator, office and clerical staff” (32 employees in unit) (*Having regard to the agreement of the parties*)

**2316-94-R:** Southern Ontario Newspaper Guild (Applicant) v. Owen Sound Sun Times, A Division of Southam Inc. (Respondent)

Unit: “all employees of the Owen Sound Sun Times, A Division of Southam Inc., in its Editorial Department in the City of Owen Sound, save and except Editor, News Editor, Night News Editor and City/District Editor” (22 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

**2332-94-R:** Canadian Union of Public Employees (Applicant) v. St. Michael’s College School (Respondent)

Unit: “all employees of St. Michael’s College School in the Municipality of Metropolitan Toronto, save and except Managers, persons above the rank of Manager, Head Secretary and persons for whom any trade union held bargaining rights as of October 4, 1994” (38 employees in unit) (*Having regard to the agreement of the parties*)

**2370-94-R:** Canadian Security Union (Applicant) v. Wackenhut of Canada Limited (Respondent)

Unit: “all security officers in the employ of Wackenhut of Canada Limited in the Municipality of Metropolitan Toronto, in the Regional Municipality of Halton, in the Regional Municipality of Peel, in the Regional Municipality of York, and in the Regional Municipality of Durham, save and except supervisors and persons above the rank of supervisor, and persons regularly employed for not more than 24 hours per week, and those persons for whom a trade union held bargaining rights on October 3, 1994” (56 employees in unit) (*Having regard to the agreement of the parties*)

**2436-94-R:** Labourers’ International Union of North America, Ontario Provincial District Council. (Applicant) v. Canadian Corps of Commissionaires (Hamilton) (Respondent)

Unit: “all employees of Canadian Corps of Commissionaires (Hamilton) employed for the City of Brantford, in the City of Brantford, save and except Detachment Commanders and persons above the rank of Detachment Commander” (15 employees in unit) (*Having regard to the agreement of the parties*)

**2438-94-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Lafarge Canada Inc. c.o.b. as Lafarge Aggregates (Respondent)

Unit: “all employees of Lafarge Canada Inc. c.o.b. as Lafarge Aggregates at its quarry in the Township of Dawson, save and except supervisors, persons above the rank of supervisor, office, technical and sales staff” (39 employees in unit) (*Having regard to the agreement of the parties*)

**2455-94-R:** United Brotherhood of Carpenters and Joiners of America Local 1072 (Applicant) v. JWS Manufacturing Inc. (Respondent)

Unit: “all employees of JWS Manufacturing Inc. in the Municipality of Metropolitan Toronto, save and except forepersons, persons above the rank of foreperson, office and sales staff” (49 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

**2458-94-R:** International Union of Bricklayers and Allied Craftsmen Local 28 Ontario (Applicant) v. C & J Refractories & Maintenance Limited (Respondent)

Unit: “all bricklayers and bricklayers’ apprentices, stonemasons and stonemasons’ apprentices in the employ of C & J Refractories & Maintenance Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all bricklayers and bricklayers’ apprentices, stonemasons



and stonemasons' apprentices in the employ of C & J Refractories & Maintenance Limited in all sectors of the construction industry within a radius of 57 kilometers (approximately 35 miles) of the City of Sudbury Federal Building, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

**2467-94-R:** Canadian Union of Public Employees (Applicant) v. C.A.W. Community Child Care and Developmental Services Inc. In-Home Program (Respondent)

Unit: "all employees of the C.A.W. Community Child Care and Developmental Services Inc. In-Home Program in the City of Windsor, save and except supervisors, persons above the rank of supervisor, persons for whom any trade union held bargaining rights on the date of application, the Secretary to the Director, and persons not regularly employed for more than 24 hours per week" (19 employees in unit) (*Having regard to the agreement of the parties*)

**2469-94-R:** Hospitality Employees, Service Employees Union of Canada (Applicant) v. Sip & Chat Restaurant (Respondent)

Unit: "all employees of Sip & Chat Restaurant in the Municipality of Metropolitan Toronto, save and except supervisors, and persons above the rank of supervisor" (3 employees in unit) (*Having regard to the agreement of the parties*)

**2473-94-R:** Canadian Union of Operating Engineers and General Workers (Applicant) v. York Spring and Radiator Service Ltd. (Respondent) v. Group of Employees (Objectors)

Unit: "all employees of York Spring and Radiator Service Ltd. employed in the Town of Aurora, save and except supervisors, persons above the rank of supervisor, office and sales staff and customer service counter personnel" (9 employees in unit) (*Having regard to the agreement of the parties*)

**2474-94-R:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Eastern Power Developers Corp. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Eastern Power Developers Corp. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Eastern Power Developers Corp. in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (19 employees in unit)

**2475-94-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. McElwain Pontiac Buick GMC Ltd. (Respondent) v. Group of Employees (Objectors)

Unit: "all employees of McElwain Pontiac Buick GMC Ltd. in the City of London, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff" (21 employees in unit) (*Having regard to the agreement of the parties*)

**2479-94-R:** Communications, Energy & Paperworkers Union of Canada (CEP) (Applicant) v. K-Var Timber Ltd. (Respondent)

Unit: "all employees of K-Var Timber Ltd. in the District of Kenora, save and except supervisors, persons above the rank of supervisor, office, clerical, sales and engineering staff" (6 employees in unit) (*Having regard to the agreement of the parties*)

**2494-94-R:** Labourers' International Union of North America, Local 506 (Applicant) v. Eastern Power Developers Corp. (Respondent) v. Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Intervener)

Unit: “all construction labourers in the employ of Eastern Power Developers Corp. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of Eastern Power Developers Corp. in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman” (23 employees in unit)

**2511-94-R:** United Steelworkers of America (Applicant) v. Grand & Toy Limited (Respondent)

Unit: “all employees of Grand & Toy Limited at 33 Green Belt Drive in the Municipality of Metropolitan Toronto, regularly employed for not more than 24 hours per week, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff, maintenance mechanics and mechanics’ helpers, security guards and students employed during the school vacation period” (57 employees in unit) (*Having regard to the agreement of the parties*)

**2513-94-R:** International Brotherhood of Locomotive Engineers (Applicant) v. Goderich-Exeter Railway Co. Ltd. (Respondent)

Unit: “all employees of Goderich-Exeter Railway Co. Ltd. in the Town of Goderich and the City of Stratford, save and except supervisors and persons above the rank of supervisor” (12 employees in unit) (*Having regard to the agreement of the parties*)

**2518-94-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Stevesan Investment Company Limited c.o.b. as Sanitary Maintenance Systems and 549378 Ontario Limited c.o.b. as Sanitary Maintenance Systems (Respondent)

Unit: “all employees of Stevesan Investment Company Limited c.o.b. as Sanitary Maintenance Systems and 549378 Ontario Limited c.o.b. as Sanitary Maintenance Systems at 55 Bloor Street West in the Municipality of Metropolitan Toronto, save and except non-working forepersons and persons above the rank of non-working foreperson” (23 employees in unit) (*Having regard to the agreement of the parties*)

**2519-94-R:** United Steelworkers of America (Applicant) v. Millscott Holdings Ltd. (Respondent)

Unit: “all employees of Millscott Holdings Ltd. at 477 Gardiners Road in the City of Kingston, save and except General Managers, Assistant Managers, persons above the rank of General Manager, and Assistant Manager, delivery drivers and office and clerical staff” (45 employees in unit) (*Having regard to the agreement of the parties*)

**2531-94-R:** Labourers’ International Union of North America, Local 493 (Applicant) v. Commonwealth Plywood Company Limited (Respondent)

Unit: “all employees of Commonwealth Plywood Company Limited employed at its North Bay dry kilns services division in the City of North Bay in the District of Nipissing, save and except Supervisors, persons above the rank of supervisor, office, professional engineering, technical and clerical staff” (18 employees in unit)

**2542-94-R:** Canadian Union of Public Employees (Applicant) v. Essex County Association for Community Living (Respondent)

Unit: “all office and clerical employees of Essex County Association for Community Living in the County of Essex, save and except Supervisors, persons above the rank of Supervisor, Executive Assistant, Human Resources Officer, Volunteer and Staff Development Officer and persons for whom any trade union held bargaining rights as of October 18, 1994” (5 employees in unit)

**2546-94-R:** United Steelworkers of America (Applicant) v. Intertec Security and Investigation Ltd. (Respondent)

Unit: “all employees of Intertec Security and Investigation Ltd. working at 47 Austin Terrace in the Municipality of



pality of Metropolitan Toronto, save and except Patrol Supervisors and persons above the rank of Patrol Supervisor” (3 employees in unit) (*Having regard to the agreement of the parties*)

**2549-94-R:** Service Employees’ Union, Local 210 (Applicant) v. The Metropolitan General Hospital (Respondent) v. Ontario Public Service Employees Union (Intervener)

Unit: “all Pharmacy Assistants of The Metropolitan General Hospital in the City of Windsor, save and except Supervisors and persons above the rank of Supervisor and persons regularly employed for not more than 15 hours per week” (9 employees in unit) (*Having regard to the agreement of the parties*)

**2560-94-R:** Canadian Union of Public Employees (Applicant) v. The Doctors Hospital (Respondent)

Unit: “all interpreters employed by The Doctors Hospital in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, employees whose wages are funded by government grants and persons covered by subsisting collective agreements” (4 employees in unit) (*Having regard to the agreement of the parties*)

**2561-94-R:** Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Patella Manufacturing (1991) Inc. (Respondent)

Unit: “all carpenters and carpenters’ apprentices in the employ of Patella Manufacturing (1991) Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters’ apprentices in the employ of Patella Manufacturing (1991) Ltd. in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman” (2 employees in unit)

**2563-94-R:** Canadian Security Union (Applicant) v. Ar-Line Security (Respondent)

Unit: “all security officers in the employ of Ar-Line Security at 66 Warsaw Place, 100 Warsaw Place (Warsaw Place), 1 Washington Crescent and 3 Washington Crescent (Glenden Park Towers) in the City of Elliot Lake, save and except supervisors and persons above the rank of supervisor” (3 employees in unit) (*Having regard to the agreement of the parties*)

**2617-94-R:** International Union of Bricklayers and Allied Craftsmen, Local 1 (Applicant) v. Fahrmeyer Masonry Ltd. (Respondent)

Unit: “all journeyman and apprentice bricklayers in the employ of Fahrmeyer Masonry Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all journeyman and apprentice bricklayers in the employ of Fahrmeyer Masonry Ltd. in all sectors of the construction industry in the Regional Municipality of Hamilton-Wentworth, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman” (11 employees in unit)

**2626-94-R:** Employees’ Association St. Mary’s of the Lake Hospital (Applicant) v. Providence Manor (Respondent)

Unit: “all employees of Providence Manor in the City of Kingston, save and except the Sisters, professional medical staff, registered nursing staff, graduate nurses, paramedical and technical personnel, payroll clerk, outreach attendants, students, resident assistants, executive secretaries, administrative assistants, supervisors and persons above the rank of supervisor and persons covered by subsisting collective agreements on October 21, 1994” (187 employees in unit) (*Having regard to the agreement of the parties*)

**2628-94-R:** International Association of Machinists and Aerospace Workers (Applicant) v. Allwaste of Canada Ltd. & 770950 Ontario Inc. o/a Caligo Inc. (Respondent)



Unit: “all employees of Allwaste of Canada Ltd. & 770950 Ontario Inc. o/a Caligo Inc. at its operations at 50 Clearview Drive in the Town of Tillsonburg, save and except supervisors, persons above the rank of supervisor, office and sales staff” (16 employees in unit) (*Having regard to the agreement of the parties*)

**2643-94-R:** National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) (Applicant) v. Windsor Casino Limited (Respondent)

Unit: “all employees of the Windsor Casino Limited in the City of Windsor, save and except Supervisors, persons above the rank of Supervisor, Administrative Assistants, Assistant to Directors and/or Managers, Staff Accountant, Internal Auditor, Accounts Payable Clerk, Payroll Clerk, Benefits Coordinator, Human Resources Administrator, Human Resources Analyst, Human Resources Clerk, Recruitment Coordinator, Training Coordinator, Records Retention Clerk, Lead Computer Operator, Personal Computer Specialist and those persons covered by a previous application for certification” (66 employees in unit) (*Having regard to the agreement of the parties*)

**2661-94-R:** Christian Labour Association of Canada (Applicant) v. Meadowvale Security Guard Services Inc. (Respondent)

Unit: “all employees of Meadowvale Security Guard Services Inc. employed at 7805 Bayview Avenue, in the Town of Markham, save and except Patrol Supervisors and persons above the rank of Patrol Supervisor” (6 employees in unit) (*Having regard to the agreement of the parties*)

**2676-94-R:** Labourers’ International Union of North America, Local 837 (Applicant) v. Champions Fitness Ltd. (Respondent)

Unit: “all employees of Champions Fitness Ltd. c.o.b. as International Family Fitness Centres in the South Hamilton Square, 1550 Upper James Street, in the City of Hamilton, save and except supervisors and persons above the rank of supervisor” (34 employees in unit) (*Having regard to the agreement of the parties*)

**2701-94-R:** Lake Simcoe Employees Association (Applicant) v. Lake Simcoe Enterprises Limited (Respondent)

Unit: “all employees of Lake Simcoe Enterprises Limited in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff” (28 employees in unit) (*Having regard to the agreement of the parties*)

**2702-94-R:** Ontario Public Service Employees Union (Applicant) v. Aequitas Inc. (Respondent)

Unit: “all employees of Aequitas Inc. in the Regional Municipality of Waterloo, save and except Office Manager and persons above the rank of Office Manager” (14 employees in unit) (*Having regard to the agreement of the parties*)

**2716-94-R:** Labourers’ International Union of North America, Local 183 (Applicant) v. Hallmark Housekeeping Services Inc. (Respondent)

Unit: “all employees of Hallmark Housekeeping Services Inc. at 400 University Avenue in the Municipality of Metropolitan Toronto, save and except forepersons and persons above the rank of foreperson” (23 employees in unit) (*Having regard to the agreement of the parties*)

**2730-94-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Brookside IGA (Respondent)

Unit: “all employees of Brookside IGA in the Township of Otonabee, save and except Assistant Store Manager/Grocery Manager, persons above the rank of Assistant Store Manager/Grocery Manager, Meat Manager, Produce Manager, Head Cashier and Bookkeeper” (30 employees in unit) (*Having regard to the agreement of the parties*)

**2731-94-R:** IWA-Canada (Applicant) v. Fred Murphy Pembroke (1982) Limited (Respondent)

Unit: “all employees of Fred Murphy Pembroke (1982) Limited employed at its body shop in the Township of

Stafford and its garage in the Township of Pembroke, save and except Supervisors/Department Managers, persons above the rank of Supervisor/Department Manager, office, clerical and sales staff, and persons regularly employed for not more than 24 hours per week” (16 employees in unit) (*Having regard to the agreement of the parties*)

**2752-94-R:** United Steelworkers of America (Applicant) v. O.S. Plastics Inc. (Respondent)

Unit: “all employees of O.S. Plastics Inc. in the City of Cornwall, save and except forepersons, persons above the rank of foreperson, office, clerical and sales staff” (33 employees in unit) (*Having regard to the agreement of the parties*)

**2766-94-R:** Amalgamated Clothing and Textile Workers Union (Applicant) v. Republic Environmental Systems (Pickering) Ltd. (Respondent)

Unit: “all employees of Republic Environmental Systems (Pickering) Ltd. in the City of Pickering, save and except Production Supervisor, persons above the rank of Production Supervisor, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period” (7 employees in unit) (*Having regard to the agreement of the parties*)

**2786-94-R:** Teamsters Local Union No. 879 (Applicant) v. Uniflo Sewer Services Inc. (Respondent)

Unit: “all employees of Uniflo Sewer Services Inc., employed in and out of the City of Hamilton, save and except dispatcher, persons above the rank of dispatcher, office and sales staff” (24 employees in unit) (*Having regard to the agreement of the parties*)

**2803-94-R:** Service Employees Union, Local 210 (Applicant) v. Kent County Roman Catholic Separate School Board (Respondent)

Unit: “all custodial and maintenance employees of the Kent County Roman Catholic Separate School Board in the County of Kent, save and except Supervisors and persons above the rank of Supervisor” (67 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

**2809-94-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Crystal Maintenance Contractors Limited (Respondent)

Unit: “all employees of Crystal Maintenance Contractors Limited at 250 Davisville Avenue and 477 Mount Pleasant Avenue in the Municipality of Metropolitan Toronto, save and except supervisors and persons above the rank of supervisor” (5 employees in unit) (*Having regard to the agreement of the parties*)

**2847-94-R:** Labourers’ International Union of North America, Local 1059 (Applicant) v. David Martin Enterprises (London) Limited c.o.b. as Martin Building Maintenance (Respondent)

Unit: “all employees of David Martin Enterprises (London) Limited c.o.b. as Martin Building Maintenance employed at 1680 Richmond Street, in the City of London, save and except non-working supervisors, persons above the rank of non-working supervisor, office and sales staff” (3 employees in unit) (*Having regard to the agreement of the parties*)

**2848-94-R:** United Steelworkers of America (Applicant) v. Industrial Glove & Garment Limited (Respondent)

Unit: “all employees of Industrial Glove & Garment Limited located in the Regional Municipality of Durham, save and except Office Manager and persons above the rank of Officer Manager” (19 employees in unit) (*Having regard to the agreement of the parties*)

**Bargaining Agents Certified Subsequent to a Pre-Hearing Vote**

**2114-94-R:** The Association of Allied Health Professionals: Ontario (Applicant) v. The Trustees of the Ottawa Civic Hospital (Respondent) v. The Canadian Union of Public Employees, Local 1384 (Intervener)

Unit: “all employees of the Social Work Department of The Trustees of the Ottawa Civic Hospital at Ottawa,

save and except the department head and the first assistants to the department head and employees in bargaining units for which any trade union held bargaining rights as of September 14, 1994" (24 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	27
Number of persons who cast ballots	23
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	23
Number of ballots marked in favour of applicant	23
Number of ballots marked in favour of intervener	0

**2335-94-R:** Power Workers' Union Canadian Union of Public Employees Local 1000, C.L.C. (Applicant) v. The Public Utilities Commission of the City of Barrie (Respondent) v. International Brotherhood of Electrical Workers, Local 636 (Intervener)

Unit: "all office, clerical and technical employees of The Public Utilities Commission of the City of Barrie, save and except Supervisors, persons above the rank of Supervisor, Assistant Supervisor, Engineer, Chief Clerk, Accountant, Information Systems Supervisor, Secretary to the General Manager, Secretary to the Manager, Finance & Administration, Secretary to the Manager, Human Resources, temporary employees, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period (including cooperative students), and those persons covered by subsisting collective agreements" (41 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	41
Number of persons who cast ballots	38
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	38
Number of ballots marked in favour of applicant	37
Number of ballots marked in favour of intervener	1

**2547-94-R:** United Steelworkers of America (Applicant) v. Intertec Security and Investigation Ltd. (Respondent) v. Canadian Union of Professional Security Guards (Intervener)

Unit: "all security guards of Intertec Security and Investigation Ltd. working at 155 Gordon Baker Road in the Municipality of Metropolitan Toronto, save and except Patrol Supervisors and persons above the rank of Patrol Supervisor" (5 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of ballots marked in favour of applicant	3
Number of ballots marked in favour of intervener	0

**2548-94-R:** United Steelworkers of America (Applicant) v. Intertec Security and Investigation Ltd. (Respondent) v. Canadian Union of Professional Security Guards (Intervener)

Unit: "all security guards of Intertec Security and Investigation Ltd. working at 740 Ellesmere Road in the Municipality of Metropolitan Toronto, save and except Patrol Supervisors and persons above the rank of Patrol Supervisor" (7 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of ballots marked in favour of applicant	7
Number of ballots marked in favour of intervener	0



### Bargaining Agents Certified Subsequent to a Post-Hearing Vote

#### 0830-94-R: LIUNA Local 607 (Applicant) v. Armac Drilling and Blasting Ltd. (Respondent)

Unit: "all construction labourers in all sectors of the construction industry in the District of Thunder Bay, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (11 employees in unit)

Number of names of persons on revised voters' list	10
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	3

#### 1249-94-R: The Ontario Secondary School Teachers' Federation (Applicant) v. The Norfolk Board of Education; Rick Smith; Robert Scott; Donald Drinkwater (Respondents) v. Group of Employees (Objectors)

Unit: "all custodians and maintenance employees employed by The Norfolk Board of Education; Rick Smith; Robert Scott; Donald Drinkwater, save and except forepersons, and persons above the rank of foreperson" (79 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on revised voters' list	81
Number of persons who cast ballots	80
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	80
Number of ballots marked in favour of applicant	46
Number of ballots marked against applicant	34

#### 1561-94-R: Service Employees' Union, Local 210 (Applicant) v. The Canadian Red Cross Society (Ontario Division) (Respondent)

Unit: "all Homemakers employed by The Canadian Red Cross Society (Ontario Division) at its Windsor Essex County Branch in the County of Essex, save and except supervisors, persons above the rank of supervisor, office and clerical employees and persons in bargaining units for which any trade union held bargaining rights as of August 2, 1994" (301 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	320
Number of persons who cast ballots	238
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	236
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	6
Number of ballots marked in favour of applicant	157
Number of ballots marked against applicant	75

#### 2084-94-R: Canadian Union of Public Employees (Applicant) v. Contemporary Leisure Canada Inc. (Respondent)

Unit: "all employees of Contemporary Leisure Canada Inc. in the City of Hamilton, save and except supervisors and persons above the rank of supervisor" (17 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	17
Number of persons who cast ballots	9
Number of ballots marked in favour of applicant	8
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	1

**2374-94-R:** Service Employees International Union, Local 204 Affiliated with the A.F. of L., C.I.O., C.L.C. (Applicant) v. Rittenhouse Ribbons & Rolls Ltd. (Respondent)

Unit: “all employees of Rittenhouse Ribbons & Rolls Ltd., in the Town of Markham, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff” (58 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	60
Number of persons who cast ballots	57
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	56
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of applicant	34
Number of ballots marked against applicant	22
Number of ballots segregated and not counted	1

### Applications for Certification Dismissed Without Vote

**2636-94-R:** United Food and Commercial Workers International Union AFL/CIU, CLC (Applicant) v. Dutch Boy Food Markets (Respondent)

### Applications for Certification Dismissed Subsequent to a Pre-Hearing Vote

**2089-94-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Trijan Industries (Respondent) v. United Steelworkers of America (Intervener)

Unit #1: “all employees of Trijan Industries in the City of Sarnia and in the Township of Sarnia, save and except forepersons, persons above the rank of foreperson, office and sales staff” (13 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	13
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of ballots marked in favour of applicant	3
Number of ballots marked in favour of intervener	7

### Applications for Certification Dismissed Subsequent to a Post-Hearing Vote

**1861-94-R:** International Brotherhood of Electrical Workers, Local 636 (Applicant) v. OE London Inc. (Respondent)

Unit: “all employees of OE London Inc. in and out of the City of Kitchener, save and except Managers and persons above the rank of Manager” (13 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	14
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	11

**2150-94-R:** United Food and Commercial Workers International Union, AFL-CIO-CLC (Applicant) v. L.J. Daw Limited c.o.b. as Brantford Home Centre (Respondent) v. Group of Employees (Objectors)

Unit: “all employees of L.J. Daw Limited c.o.b. as Brantford Home Centre in the City of Brantford, save and except supervisors and persons above the rank of supervisor” (32 employees in unit)

Number of names of persons on revised voters' list	35
Number of persons who cast ballots	34

Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	32
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	25
Number of ballots segregated and not counted	2

### Applications for Certification Withdrawn

**1644-94-R:** International Brotherhood of Painters and Allied Trades, Local 557 (Applicant) v. The Governing Council of the University of Toronto (Respondent)

**1894-94-R:** Hotel Employees Restaurant Employees Union, Toronto Canada (Applicant) v. Hotel Novotel Toronto Centre (Respondent)

**2263-94-R:** Labourers' International Union of North America, Local 183 (Applicant) v. Calsper Developments Inc. (Respondent)

**2394-94-R:** Hotel Employees Restaurant Employees Union, Local 75 affiliated with the Hotel Employees & Restaurant Employees International Union (Applicant) v. J.J. Muggs Gourmet Grille Inc. c.o.b. as J.J. Muggs Gourmet Grille (Respondent)

**2631-94-R:** Teamsters Local Union No. 879 (Applicant) v. Uniflo Pipeliners Canada Inc. (Respondent)

**2653-94-R:** Bakery, Confectionery & Tobacco Workers' International Union, Local 264 (Applicant) v. Michel's Baguette French Bakery Cafe (Respondent)

**2720-94-R:** Canadian Union of Public Employees (Applicant) v. The Corporation of the County of Bruce (Respondent)

**2774-94-R:** National Automobile, Aerospace and Agricultural Workers Union of Canada (CAW - Canada) (Applicant) v. B.F.I. Waste Systems Browning - Ferris Industries Limited (Respondent)

**2784-94-R:** United Food and Commercial Workers International Union AFL-CIO-CLC (Applicant) v. Dutch Boy Food Markets (Respondent)

**2933-94-R:** Canadian Union of Operating Engineers % General Workers (Applicant) v. K & W Optical Company Ltd. (Respondent)

### APPLICATION FOR COMBINATION OF BARGAINING UNITS

**0158-94-R:** International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada (Applicant) v. Famous Players Inc. (Respondent) (*Granted*)

**2115-94-R:** The Association of Allied Health Professionals: Ontario (Applicant) v. The Trustees of the Ottawa Civic Hospital (Respondent) (*Granted*)

**2468-94-R:** Canadian Union of Public Employees Local 2225-09 (Applicant) v. Caressant Care Nursing Home of Canada, Limited, Operating under the style of cause as Caressant Care Lindsay (Nursing Home & Rest Home) (Respondent) (*Granted*)

**2550-94-R:** Service Employees' Union, Local 210 (Applicant) v. The Metropolitan General Hospital (Respondent) v. Ontario Public Service Employees Union (Intervener) (*Granted*)



**2696-94-R:** The Doctors Hospital (Applicant) v. Canadian Union of Public Employees Local 1474 (Respondent) (*Granted*)

**2700-94-R:** Essex County Association for Community Living (Applicant) v. Canadian Union of Public Employees and its Local 3137 (Respondent) (*Granted*)

**2852-94-R:** The Salvation Army Toronto Addictions and Rehabilitation Centre, Industrial Services (Applicant) v. Laundry & Linen Drivers and Industrial Workers, Local No. 847, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Respondent) (*Withdrawn*)

## **FIRST AGREEMENT - DIRECTION**

**2401-94-FC:** Amalgamated Clothing and Textile Workers Union (Applicant) v. Royal Shirt Company Limited (Respondent) (*Withdrawn*)

**2719-94-FC:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 463 (Applicant) v. M & S Plumbing, and/or 954633 Ontario Inc. c.o.b. as M & S Plumbing (Respondent) (*Withdrawn*)

**2856-94-FC:** Glazier Medical Centre (Applicant) v. National Automobile, Aerospace and Agricultural Implementation Workers Union of Canada (CAW-Canada) (Respondent) (*Granted*)

## **APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER**

**0415-93-R:** United Brotherhood of Carpenters and Joiners of America Local 785 (Applicant) v. Ariss Construction Inc., Jaratech Construction Ltd., Jaratech Structures Inc. (Respondents) (*Granted*)

**0693-94-R:** International Association of Bridge, Structural and Ornamental Iron Workers, Local 721 (Applicant) v. K & K Services, Keith Kawase, Finer Steel (Respondents) (*Granted*)

**0785-94-R:** International Association of Heat and Frost Insulators and Asbestos Workers, Local 95 (Applicant) v. D & F Insulation Ltd., F & F Two Company (Respondents) (*Withdrawn*)

**1465-94-R:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Energy Consultants & Contracting Inc. and J.L. Energy Consultants Ltd. (Respondents) (*Endorsed Settlement*)

**1583-94-R:** Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Orlando Corporation (formerly known as The Orlando Realty Corporation Limited), Select Properties Limited, Select Management, Orlando Design Services Ltd. (Respondents) (*Withdrawn*)

**2191-94-R:** Teamsters, Chauffeurs, Warehousemen and Helpers Union Local No. 880 (Applicant) v. Trican Materials Limited, Dunhill Contracting Ltd. (Respondents) (*Granted*)

**2239-94-R:** International Union of Bricklayers and Allied Craftsmen, Local 28 and the Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftsmen (Applicant) v. Base Construction Inc., Provincial Masonry Inc. and 1025213 Ontario Inc. (Respondents) (*Endorsed Settlement*)

**2411-94-R:** Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local Union No. 880 (Applicant) v. Van De Hogen Material Handling Inc. and Van De Hogen Distribution Inc. (Respondent) (*Withdrawn*)

**2450-94-R:** International Brotherhood of Electrical Workers, Local 773 (Applicant) v. Ebbinghaus Electric Limited, Gregory A. Ebbinghaus c.o.b. as Lunar Lights Contracting (Respondents) (*Endorsed Settlement*)

**2489-94-R:** International Association of Heat and Frost Insulators and Asbestos Workers, Local 95 (Applicant)

cant) v. Tomco Insulation Ltd., 1066937 Ontario Ltd. c.o.b. as Diamond Associates Insulation a Division of 1066937 Ontario Ltd. (Respondents) (*Withdrawn*)

## SALE OF A BUSINESS

**0415-93-R:** United Brotherhood of Carpenters and Joiners of America Local 785 (Applicant) v. Ariss Construction Inc., Jaratech Construction Ltd., Jaratech Structures Inc. (Respondents) (*Granted*)

**0693-94-R:** International Association of Bridge, Structural and Ornamental Iron Workers, Local 721 (Applicant) v. K & K Services, Keith Kawase, Finer Steel (Respondents) (*Granted*)

**0785-94-R:** International Association of Heat and Frost Insulators and Asbestos Workers, Local 95 (Applicant) v. D & F Insulation Ltd., F & F Two Company (Respondents) (*Withdrawn*)

**1111-94-R:** The Hotel Dieu Grace Hospital (Applicant) v. International Brotherhood of Electrical Workers, Local 1230 and , Service Employees Union, Local 210 (Respondents) (*Granted*)

**1139-94-R:** Ontario Public Service Employees Union (Applicant) v. Hotel-Dieu Grace Hospital (Respondent) v. Service Employees Union, Local 210 (Intervener) (*Granted*)

**1465-94-R:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Energy Consultants & Contracting Inc. and J.L. Energy Consultants Ltd. (Respondents) (*Endorsed Settlement*)

**1583-94-R:** Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Orlando Corporation (formerly known as The Orlando Realty Corporation Limited), Select Properties Limited, Select Management, Orlando Design Services Ltd. (Respondents) (*Withdrawn*)

**2239-94-R:** International Union of Bricklayers and Allied Craftsmen, Local 28 and the Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftsmen (Applicant) v. Base Construction Inc., Provincial Masonry Inc. and 1025213 Ontario Inc. (Respondents) (*Endorsed Settlement*)

**2375-94-R:** United Steelworkers of America (Applicant) v. Syl-Shar Holdings Inc. (Respondent) (*Granted*)

**2411-94-R:** Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local Union No. 880 (Applicant) v. Van De Hogen Material Handling Inc. and Van De Hogen Distribution Inc. (Respondent) (*Withdrawn*)

**2450-94-R:** International Brotherhood of Electrical Workers, Local 773 (Applicant) v. Ebbinghaus Electric Limited, Gregory A. Ebbinghaus c.o.b. as Lunar Lights Contracting (Respondents) (*Endorsed Settlement*)

**2489-94-R:** International Association of Heat and Frost Insulators and Asbestos Workers, Local 95 (Applicant) v. Tomco Insulation Ltd., 1066937 Ontario Ltd. c.o.b. as Diamond Associates Insulation a Division of 1066937 Ontario Ltd. (Respondents) (*Withdrawn*)

## UNION SUCCESSOR RIGHTS (SUCCESSOR STATUS)

**2510-94-R:** Amalgamated Transit Union, Local 1703 (Applicant) v. Amalgamated Transit Union, Local 1572 (Respondent) (*Granted*)

## Section 64.2 - SUCCESSOR RIGHTS/CONTRACT SERVICES

**2288-94-R:** United Steelworkers of America (Applicant) v. Lencan Investigation Services Inc. (Respondent) (*Granted*)

## APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

**3755-92-R:** Leslie Robinson (Applicant) v. Ontario Public Service Employees Union (Respondent) v. Metro Tenants Legal Services (Intervener) v. Group of Employees (Objectors) (*Dismissed*)

Unit: “all employees of Metro Tenants Legal Services in the Municipality of Metropolitan Toronto regularly employed as Lawyers, CLW and support staff” (10 employees in unit)

**2481-94-R:** Susan Cashman, Lynn Lajoie (Applicants) v. Communications, Energy and Paperworkers Union of Canada (Respondent) v. Centra Gas Ontario Inc. (Intervener) (*Granted*)

**2517-94-R:** Ruth VanKooten (Applicant) v. Internatinal Association of Machinists and Aerospace Workers, AFL-CIO-CLC (Respondent) v. Elgin Labour Centre Inc. (Intervener) (*Granted*)

**2648-94-R:** Ennio Marroco (Applicant) v. International Union of Operating Engineers (Respondent) v. Browning-Ferris Industries Ltd. (Intervener) (*Withdrawn*)

**2742-94-R:** Robert Bodchon (Applicant) v. Teamsters, Chauffeurs, Warehouseman and Helpers Union, Local No: 880 (Respondent) v. Leon’s Furniture Limited (Intervener) (*Granted*)

**2832-94-R:** Andre Gharib (Applicant) v. National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW - Canada) and its Local 195, CAW (Respondent) v. Kehl Tools Ltd. (Intervener) v. Group of Employees (Objectors) (*Withdrawn*)

## APPLICATIONS FOR DECLARATION OF UNLAWFUL STRIKE (CONSTRUCTION INDUSTRY)

**3827-93-U:** Ontario Sheet Metal Workers’ & Roofers’ Conference, Sheet Metal Workers’ International Association, Local 30 (Applicant) v. Sheet Metal Workers’ International Association, Local 285, Tara Heating & Air Conditioning Limited (Respondents) (*Withdrawn*)

### APPLICATION - UNLAWFUL AGREEMENT (S.137(3))

**3927-93-U:** Ontario Sheet Metal Workers’ & Roofers’ Conference; Sheet Metal Workers’ International Association, Local 30 (Applicant) v. Sheet Metal Workers’ International Association, Local 285, Canadian Air Conditioning (Respondents) (*Withdrawn*)

## APPLICATIONS CONCERNING REPLACEMENT WORKERS

**2668-94-U:** United Food & Commercial Workers International Union, Local 175 (Applicant) v. K & Son Maintenance Company Ltd. (Respondent) (*Withdrawn*)

**3052-94-U:** Communications, Energy and Paperworkers Union of Canada, Local 87-M Southern Ontario Newspaper Guild (Applicant) v. Thomson Newspapers Company Limited and The Oshawa Times, a division of Thomson Newspapers Company Limited (Respondents) (*Withdrawn*)

## COMPLAINTS OF UNFAIR LABOUR PRACTICE

**0978-92-U:** Dale Seeley (Applicant) v. Dave Noble and United Brotherhood of Carpenters Local 1946 (Respondents) (*Withdrawn*)

**3656-92-U; 3761-92-U; 0069-93-U:** National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) (Applicant) v. Lemmerz Canada Inc. (c.o.b. Reynolds-Lemmerz Indus-



tries) (Respondent); National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (C.A.W. - Canada) (Applicant) v. Reynolds-Lemmerz Industries, Jim Gray, George Brown, Trudy Dafeo and Rod McPherson (Respondents) (*Withdrawn*)

**3644-93-U:** United Automobile, Aerospace and Agricultural Implement Workers of America, U.A.W. (Applicant) v. Benn Iron Foundry Limited (Respondent) (*Withdrawn*)

**3679-93-U:** Pauline Wright (Schneider) (Applicant) v. Northern Ontario Joint Council of the Retail, Wholesale and Department Store Union (Respondent) v. 807327 Ontario Limited c.o.b. as Walden Valu-Mart (Intervener) (*Dismissed*)

**3828-93-U; 3926-93-U:** Ontario Sheet Metal Workers' & Roofers' Conference, Sheet Metal Workers' International Association, Local 30 (Applicant) v. Sheet Metal Workers' International Association, Local 285, Tara Heating & Air Conditioning Limited (Respondents); Ontario Sheet Metal Workers' & Roofers' Conference; Sheet Metal Workers' International Association, Local 30 (Applicant) v. Sheet Metal Workers' International Association, Local 285, Canadian Air Conditioning (Respondents) (*Withdrawn*)

**4172-93-U:** Gary Bowen (Applicant) v. United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO, CLC, Local Union No. 677 and Uniroyal Goodrich Canada Inc. (Respondents) (*Withdrawn*)

**4275-93-U:** National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW - Canada) and its Local 1917 (Applicant) v. Euclid-Hitachi Heavy Equipment Ltd. (Respondent) (*Dismissed*)

**4425-93-U:** Lloyd Thomas Pedwell (Applicant) v. Call-A-Cab Limited and Retail, Wholesale and Department Store Union (Respondent) (*Withdrawn*)

**4517-93-U:** The Ontario Public Service Employees Union (OPSEU) (Applicant) v. The Grey Bruce Regional Health Centre (Respondent) v. Canadian Union of Public Employees (Intervener) (*Withdrawn*)

**0182-94-U:** Retail Wholesale Canada, Canadian Service Sector Division of the United Steelworkers of America, Locals 414, 422, 440, 448, 461, 483, 488, 1000 & 1688 (Applicant) v. Associated Toronto Taxi-Cab Co-operative Limited c.o.b. as Co-op Cab (Respondent) (*Withdrawn*)

**0196-94-U:** Retail, Wholesale Canada, Canadian Service Sector Division of United Steelworkers of America (Applicant) v. TRS Foods (1993) Ltd. (Respondent) (*Withdrawn*)

**0414-94-U:** Judy Sharkey (Applicant) v. Labourers' International Union of North America (Respondent) v. Labourers' International Union of North America, Local 597, Robert J. McGregor (Interveners) (*Withdrawn*)

**0536-94-U:** Delmar Taveira (Applicant) v. Hotel Employees Restaurant Employees Union Local 75 (Respondent) (*Dismissed*)

**0684-94-U:** Bhagwan Singh (Applicant) v. Glass, Molders, Pottery, Plastics and Allied Workers International Union (AFL-CIO-CLC) and Local 28B GMP (Respondent) v. Reynolds Aluminum Company of Canada Limited (Intervener) (*Granted*)

**0690-94-U; 0757-94-U:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. K & Son Maintenance Co. Inc. (Respondent) (*Granted*)

**0723-94-U; 1867-94-U:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. K & Son Maintenance Co. Inc. (Respondent) (*Endorsed Settlement*)

**0976-94-U; 1862-94-U:** Power Workers' Union, CUPE Local 1000 (Applicant) v. The Public Utilities Commission of the Corporation of the Town of Fort Frances (Respondent); Power Workers' Union, CUPE Local 1000 (Applicant) v. International Brotherhood of Electrical Workers & Local Union 1744 of the International

Brotherhood of Electrical Workers (Respondent) v. The Public Utilities Commission of the Corporation of the Town of Fort Frances (Intervener) (*Endorsed Settlement*)

**1119-94-U:** Ruth Symons for the Janitorial Staff, Ontario Hydro (Applicant) v. Hotel Employees Restaurant Employees Union, Local 75 (Respondent) v. Ontario Hydro Nuclear (Intervener) (*Withdrawn*)

**1236-94-U:** Ontario Public Service Employees Union and its Local 221 (Applicant) v. Ministry of Health and Green's Ambulance Service Inc. (Respondents) (*Withdrawn*)

**1285-94-U:** James Challenger, Charles Mailer, Matthew O'Reilly, Helen Denier, and Madan Gill on behalf 55 CAW Members etc., (Applicant) v. National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW Canada), CAW Local 303 and CAW Local 222 (Respondent) v. General Motors of Canada Limited (Intervener) (*Withdrawn*)

**1330-94-U:** Teresa Nodello (Applicant) v. Service Employees' International Union, Local 528, (Respondent) v. The Ontario Jockey Club (Intervener) (*Dismissed*)

**1338-94-U; 1476-94-U; 2446-94-U; 2447-94-U:** Novotel Toronto Airport (Applicant) v. Hotel Employees Restaurant Employees Union, Local 75 and Thomas Fabry (Respondents); Hotel Employees Restaurant Employees Union, Local 75 (Applicant) v. Toronto, Airport Novotel (Respondent) (*Withdrawn*)

**1536-94-U:** National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) (Applicant) v. Reynolds-Lemmerz Industries (Respondent) (*Endorsed Settlement*)

**1641-94-U:** Laura Slyfield (Applicant) v. Epton (Respondent) v. United Rubber, Cork, Linoleum and Plastic Workers of America, Local 73 (Intervener) (*Withdrawn*)

**1661-94-U:** Local Union 47 Sheet Metal Workers' International Association (Applicant) v. 2714744 Canada Inc. c.o.b. N C Sheet Metal (Respondent) (*Endorsed Settlement*)

**1713-94-U:** Darryl B. Norman (Applicant) v. National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) (Respondent) v. 971087 Ontario Inc. o/a Trimplas 2000 (Intervener) (*Dismissed*)

**1818-94-U:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 463 (Applicant) v. M & S Plumbing, and/or 954633 Ontario Inc. c.o.b. as M & S Plumbing (Respondent) (*Withdrawn*)

**1984-94-U:** Operative Plasterers' & Cement Masons International Association of the United States and Canada, Local 172, Restoration Steeplejacks; Gerald Kinsella; and John Marchildon, (Applicant) v. Operative Plasterers' & Cement Masons International Association of the United States and Canada, (Respondent) (*Withdrawn*)

**2012-94-U; 2159-94-U:** Rick O. Kirton (Applicant) v. Canada Hair Cloth Company Limited (Respondent); Rick Kirton (Applicant) v. Canada Hair Cloth Employees' Association (Respondent) (*Withdrawn*)

**2029-94-U:** Ms. Rosemary Cook (Applicant) v. United Steelworkers' of America Local 4605, Hayes-Dana Inc., Filter Division (Respondents) (*Dismissed*)

**2057-94-U:** Canadian Union of Educational Workers (Applicant) v. McMaster University (Respondent) (*Withdrawn*)

**2077-94-U:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Zellers Inc. (Respondent) (*Withdrawn*)

**2167-94-U:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Domclean Limited (Respondent) (*Withdrawn*)

**2180-94-U:** Daniela Barone (Applicant) v. United Foods and Commercial Workers International Union Local 1000A (Respondent) (*Withdrawn*)

**2208-94-U:** Ontario Public Service Employees Union (Applicant) v. Peel Non-Profit Housing Corporation (Respondent) (*Withdrawn*)

**2258-94-U:** Southern Ontario Newspaper Guild, Local 87, The Newspaper Guild (CLC, AFL-CIO) (Applicant) v. Niagara Falls Review, a Division of Thomson Newspapers Company Limited (Respondent) (*Withdrawn*)

**2262-94-U:** London and District Service Workers' Union, Local 220 S.E.I.U., A.F.L., C.I.O., C.L.C. (Applicant) v. Kitchenor Meadowcroft Limited Partnership (Respondent) v. 5m Management Services Ltd. (Intervener) (*Endorsed Settlement*)

**2326-94-U:** Brenda Leah Freemantle (Applicant) v. Ontario Jockey Club (Woodbine Race Track) (Respondent) (*Withdrawn*)

**2347-94-U:** Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local No. 880 (Applicant) v. Trican Materials Ltd. and Dunhill Contracting Limited (Respondents) (*Withdrawn*)

**2373-94-U:** Kim Young (Applicant) v. National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW Canada) (Respondent) v. General Motors of Canada Limited ("GMCL") (Intervener) (*Withdrawn*)

**2385-94-U:** Maria Giacobbe (Applicant) v. Ontario Joint Council A.C.T.W.U. (Respondent) v. Imperial Feather Corp. (Toronto) Limited (Intervener) (*Withdrawn*)

**2387-94-U:** United Steelworkers of America Retail Wholesale Canada, - Division of the United Steelworkers of America and its Local 414 (Applicant) v. Goodfellow Inc. (Respondent) (*Withdrawn*)

**2400-94-U:** Amalgamated Clothing and Textile Workers Union (Applicant) v. Royal Shirt Company Limited (Respondent) (*Withdrawn*)

**2440-94-U; 2441-94-U:** Mr. Lawrence C. Majesky (Applicant) v. John Ziner Lumber Limited (Respondent) v. Teamsters Local Union No. 230, Ready Mix, Building Supply, Hydro and Construction Drivers, Warehousemen and Helpers, Affiliated with the International Brotherhood of Teamsters (Intervener); Mr. Lawrence C. Majesky (Applicant) v. Teamsters Local Union No. 230, Ready Mix, Building Supply, Hydro and Construction Drivers, Warehousemen and Helpers, Affiliated with the International Brotherhood of Teamsters (Respondent) (*Withdrawn*)

**2442-94-U:** Teamsters Local Union No. 230, Ready-Mix, Building Supply, Hydro & Construction Drivers, Warehousemen and Helpers (Applicant) v. Central Supply Co. 1972 Ltd. c.o.b. Centura Floor and Wall Fashions (Respondent) (*Withdrawn*)

**2464-94-U:** International Brotherhood of Painters and Allied Trades, Local Union 1891 (Applicant) v. Golden Brush Bros. Limited (Respondent) (*Withdrawn*)

**2466-94-U:** Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, Local 351 (Applicant) v. Bourks Ignition (Respondent) (*Withdrawn*)

**2472-94-U:** Melissa Steidman (Applicant) v. Carol Hughes (Respondent) (*Withdrawn*)

**2487-94-U:** Hotel Employees and Restaurant Employees Union, Local 75, affiliated with Hotel Employees and Restaurant Employees International Union (Applicant) v. J.J. Muggs Gourmet Grille Inc. c.o.b. as J.J. Muggs Gourmet Grille (Respondent) (*Withdrawn*)



**2527-94-U:** Canadian Hearing Society (Applicant) v. Canadian Union of Public Employees, Local 2073 (Respondent) (*Withdrawn*)

**2530-94-U:** Labourers' International Union of North America, Local 493 (Applicant) v. Commonwealth Plywood Company Limited (Respondent) (*Withdrawn*)

**2567-94-U:** Domenica Mitchell (Applicant) v. United Steelworkers of America (Respondent) (*Withdrawn*)

**2623-94-U:** Labourers' International Union of North America, Local 506 (Applicant) v. Tri-Krete Limited (Respondent) (*Withdrawn*)

**2644-94-U:** Hospitality & Service Trades Union, Local 261 (Applicant) v. FJS Holdings (c.o.b. as my Cousins' Restaurant) (Respondent) (*Withdrawn*)

**2669-94-U:** Practical Nurses Federation of Ontario (Applicant) v. 678114 Ontario Inc. c.o.b. as Vistamere Retirement Residence (Respondent) (*Dismissed*)

**2678-94-U:** Thomas Edward Hounam (Applicant) v. Keeprite Workers' Independent Union (Respondent) v. National Refrigeration and Air Conditioning Products, Inc., Inter-City Products Corporation (Canada) (Intervenors) (*Withdrawn*)

**2691-94-U:** Donald G. Jackson (Applicant) v. The Corporation of the City of North York (Respondent) (*Dismissed*)

**2704-94-U:** Canadian Union of Public Employees and its Local 3703 (Applicant) v. Rideau Place Retirement Centre (Respondent) (*Withdrawn*)

**2711-94-U:** Laundry & Linen Drivers and Industrial Workers Union Local 847, affiliated with The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. The Salvation Army (Respondent) (*Withdrawn*)

**2740-94-U:** Jose Francisco Rebelo (Applicant) v. Metal Improvement Co. Inc. (Respondent) (*Dismissed*)

**2743-94-U:** International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada (Applicant) v. Famous Players Inc. (Respondent) (*Withdrawn*)

**2744-94-U:** Dennis Morrison (Applicant) v. Guelph Products a Division of Chrysler Canada Ltd., Guelph Products - Textron Canada Ltd., Canadian Automobile Union (CAW-Canada) (Respondents) (*Withdrawn*)

**2753-94-U:** Margaret Eloff (Applicant) v. National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW) Local 252 and Nestle Canada Inc. Confectionery Division (Respondents) (*Withdrawn*)

**2757-94-U:** Service Employees Union, Local 210 (Applicant) v. Chatham Public General Hospital (Respondent) (*Withdrawn*)

**2762-94-U:** Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Applicant) v. Bruno Plumbing & Contracting Inc. and Fernando Bruno (Respondent) (*Withdrawn*)

**2826-94-U:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Canusa Automotive Warehousing Inc. (Respondent) (*Withdrawn*)

**2834-94-U:** James Thomson (Applicant) v. Teamsters Local Union No. 230 (Respondent) (*Withdrawn*)

**2839-94-U:** Mr. Emmanuel Benjamin (Security Officer) (Applicant) v. Evan's Security (Jim Rowe) Supervisor (Respondents) (*Dismissed*)

**2865-94-U:** Robert Glenn Stark (Applicant) v. John Collins, President & Sheet Metal Workers' International Association Local Union #30 (Production Section) (Respondent) (*Dismissed*)

**2871-94-U:** Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local No. 880 (Applicant) v. Trican Materials Ltd. and Dunhill Contracting Ltd. (Respondents) (*Granted*)

**3065-94-U:** Barry Douglas (Applicant) v. Doug Pidgeon and Mark Magee, GCIU Local-425-C (Respondent) (*Dismissed*)

## **APPLICATION FOR INTERIM ORDER**

**2486-94-M:** Hotel Employees and Restaurant Employees Union, Local 75, affiliated with the Hotel Employees and Restaurant Employees International Union (Applicant) v. J.J. Muggs Gourmet Grille Inc. c.o.b. as J.J. Muggs Gourmet Grille (Respondent) (*Withdrawn*)

**2570-94-M:** International Brotherhood of Electrical Workers, Local 773 (Applicant) v. A.D.M. Agri-Industries Limited and 882870 Ontario Inc. operating as Advance Pipeline & Mechanical Contractors (Respondents) (*Dismissed*)

**2670-94-M:** Practical Nurses Federation of Ontario (Applicant) v. 678114 Ontario Inc. c.o.b. as Vistamere Retirement Residence (Respondent) (*Granted*)

**2709-94-M:** IWA Canada (Applicant) v. Leo Sakata Electronics (Canada) Ltd. (Respondent) (*Granted*)

**2726-94-M:** Judy Sharkey (Applicant) v. Labourers' International Union of North America, Local 597 and Michael Cummings (Respondent) (*Dismissed*)

**2836-94-M:** Ontario Pipe Trades Council and the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 46 (Applicant) v. Eastern Power Developers Corp. (Respondent) (*Withdrawn*)

**2870-94-M:** Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local No. 880 (Applicant) v. Trican Materials Ltd. and Dunhill Contracting Ltd. (Respondents) (*Granted*)

**2987-94-M:** United Food & Commercial Workers International Union, Local 175 (Applicant) v. Frade's Fruit Ltd. (Respondent) (*Granted*)

## **APPLICATIONS FOR CONSENT TO PROSECUTE**

**1782-94-U:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. K & Son Maintenance Co. Inc. and Sam Kwafo (Respondent) (*Granted*)

**2827-94-U:** Jean-Maurice Gravelle (Applicant) v. Employees' Association of Ottawa-Carleton (Respondent) (*Withdrawn*)

## **APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT**

**2314-94-M:** Retail/Wholesale Canada (Employer) v. Ault Foods Limited (Trade Union) (*Granted*)

**2806-94-M:** Kaiser Aluminum & Chemical of Canada Limited (Employer) v. United Steelworkers of America through its Local 4885 (Trade Union) (*Granted*)

**2876-94-M:** Laminated Textiles Limited (Employer) v. Laundry and Linen Drivers and Industrial Workers Union, Teamsters Local 847, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Trade Union) (*Granted*)

## JURISDICTIONAL DISPUTES

**1488-91-JD:** International Association of Bridge, Structural and Ornamental Ironworkers, Local 721 (Applicant) v. Traugott Construction (Kitchener) Ltd. and Labourers' International Union of North America, Local 506 (Respondents) (*Dismissed*)

**3499-92-JD:** International Brotherhood of Electrical Workers, Local Union 1788 (Applicant) v. Ontario Hydro and Canadian Union of Public Employees - C.L.C. Ontario Hydro Employees Union, Local 1000 (Respondents) (*Dismissed*)

**1718-94-JD:** International Association of Bridge, Structural and Ornamental Iron Workers, Iron Workers District Council of Ontario, International Association of Bridge, Structural and Ornamental Iron Workers, Local 736 (Applicant) v. Buttcon Limited, Adam Reinforcing Steel, Labourers' International Union of North America, Ontario Provincial District Council, Labourers' International Union of North America, Local 837 (Respondents) (*Withdrawn*)

## APPLICATIONS FOR DETERMINATION OF EMPLOYEE STATUS

**2682-94-M:** Canadian Union of Public Employees and its Local 855-08 (Applicant) v. The Corporation of the Town of Lindsay (Respondent) (*Withdrawn*)

## COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

**3034-93-OH:** James Savard (Applicant) v. General Motors of Canada (Respondent) (*Dismissed*)

**0019-94-OH:** Randy A. Yetman (Applicant) v. Walker Exhaust Limited (Respondent) (*Withdrawn*)

**0865-94-OH:** Jason James (Applicant) v. MLG Enterprises Limited (Respondent) (*Granted*)

**2166-94-OH:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Domclean Limited (Respondent) (*Withdrawn*)

**2381-94-OH:** Maria Amendoeira (Applicant) v. Goldlist Property Management (Respondent) (*Withdrawn*)

**2470-94-OH:** Ashok Lucian Chaddah (Applicant) v. Power Wash, a division of Filtrex Pressure Clean Ltd. (Respondent) (*Endorsed Settlement*)

**2524-94-OH:** Paul Michael Weinert (Applicant) v. Christian Bros Restaurant Supplies (Respondent) (*Withdrawn*)

**2721-94-OH:** David Meade (Applicant) v. Custom Racks Ltd. (Respondent) (*Dismissed*)

**2729-94-OH:** Joe Marusic (Applicant) v. Fulton Enterprises Inc. (Respondent) (*Withdrawn*)

**3074-94-OH:** Mohamed Elkhshab (Applicant) v. Kalbray Welding Ltd. (Respondent) (*Dismissed*)

## CONSTRUCTION INDUSTRY GRIEVANCES

**0575-93-G; 0663-93-G:** Drywall Acoustic Lathing and Insulation, Local 675 (Applicant) v. DMD Triangle Lathing and Acoustics Co. Ltd. (Respondent); Drywall Acoustic Lathing and Insulation Local 675 (Applicant) v. D.M.D. Triangle Lathing and Acoustic Co. Ltd. (Respondent) (*Terminated*)



**1216-93-G:** International Association of Bridge, Structural and Ornamental Iron Workers, Local 721 (Applicant) v. Habit Steel Construction (Respondent) (*Endorsed Settlement*)

**1985-93-G:** International Union of Bricklayers and Allied Craftsmen Local 2, Ontario and The Ontario Provincial Conference of Bricklayers and Allied Craftsmen (Applicant) v. Bayritz Construction Ltd. and Bayritz Masonry Ltd. and Dakota Masonry Ltd. and 986153 Ontario Ltd. c.o.b. as Yellow Brick Masonry, Sundial Bricklayers Inc. (Respondents) (*Granted*)

**0159-94-G:** International Union of Elevator Constructors Local 90 (Applicant) v. Windsor Elevator Service Inc. (Respondent) (*Terminated*)

**0896-94-G:** The International Brotherhood of Painters and Allied Trades - Local 1891 (Applicant) v. Aspen Drywall Inc. (Respondent) (*Endorsed Settlement*)

**1066-94-G:** Labourers' International Union of North America, Ontario Provincial District Council on behalf of its affiliated Local Unions 183, 247, 491, 493, 506, 527, 597, 607, 625, 837, 1036, 1059, 1081 and 1089 (Applicant) v. Aluma Systems Canada Inc. (Respondent) v. Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America and United Brotherhood of Carpenters and Joiners of America, Local 18 (Interveners) (*Granted*)

**1585-94-G:** Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Orlando Corporation (formerly known as The Orlando Realty Corporation Limited), Select Properties Limited, Select Management, Orlando Design Services Ltd. (Respondents) (*Withdrawn*)

**1717-94-G:** International Association of Bridge, Structural and Ornamental Iron Workers, Local 736 (Applicant) v. Buttcon Limited (Respondent) (*Withdrawn*)

**1747-94-G:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Milan Electric Ltd. (Respondent) (*Withdrawn*)

**1804-94-G:** Local 787, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. Energy Consultants & Contracting Inc., J.L. Energy Consultants Ltd. (Respondents) (*Endorsed Settlement*)

**1956-94-G:** Sheet Metal Workers' International Association, Local 30 (Applicant) v. Bothwell Accurate Limited (Respondent) (*Endorsed Settlement*)

**1957-94-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Jordis Masonry (Respondent) (*Endorsed Settlement*)

**2055-94-G:** International Brotherhood of Electrical Workers, Local 773 (Applicant) v. 649978 Ontario Limited c.o.b. as Dube Electric (Respondent) (*Granted*)

**2086-94-G:** United Brotherhood of Carpenters and Joiners of America, Local 494 (Applicant) v. Country Drywall Inc. (Respondent) (*Endorsed Settlement*)

**2110-94-G:** Sheet Metal Workers' International Association Local Union No. 285 (Applicant) v. 954848 Ontario Limited c.o.b. as Centair Mechanical Company and/or 954848 Ontario Limited c.o.b. as Centair Systems Limited and/or 954848 Ontario Limited c.o.b. as Centair Systems (Respondents) (*Endorsed Settlement*)

**2137-94-G:** Labourers' International Union of North America, Local 1036 (Applicant) v. R M Elliott Construction Ltd. (Respondent) (*Granted*)

**2187-94-G:** Sheet Metal Workers' International Association, Local 30 (Applicant) v. Pro-Air Testing (Respondent) (*Endorsed Settlement*)

- 2232-94-G:** Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. J & T Caulking and Sealing Corp. (Respondent) (*Endorsed Settlement*)
- 2286-94-G:** Sheet Metal Workers' International Association Local 30 (Applicant) v. Eldin Sheet Metal Mechanical Ltd. (Respondent) (*Endorsed Settlement*)
- 2289-94-G:** International Association of Bridge, Structural and Ornamental Iron Workers, Local 721 (Applicant) v. Modern Railings & Metal Craft Ltd. (Respondent) (*Endorsed Settlement*)
- 2360-94-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Perfer Bricklayers Masonry Ltd. (Respondent) (*Withdrawn*)
- 2361-94-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Premiere Masonry Inc. (Respondent) (*Withdrawn*)
- 2364-94-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Gladstone Construction (Respondent) (*Withdrawn*)
- 2365-94-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Parkview Construction Corp. (Respondent) (*Withdrawn*)
- 2395-94-G:** Millwright District Council of Ontario on its own behalf and on behalf of its Local 1916 (Applicant) v. Calorific Construction Limited (Respondent) (*Endorsed Settlement*)
- 2465-94-G:** International Brotherhood of Painters and Allied Trades, Local Union 1891 (Applicant) v. Golden Brush Bros. Limited (Respondent) (*Endorsed Settlement*)
- 2483-94-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 46 (Applicant) v. Inter-Wide Mechanical Contracting Company, Inter-Wide Mechanical and Contracting Limited (Respondents) (*Endorsed Settlement*)
- 2522-94-G:** Carpenters and Allied Workers, Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. T. F. Construction Ltd. (Respondent) (*Endorsed Settlement*)
- 2543-94-G:** International Association of Bridge, Structural and Ornamental Iron Workers, Local 721 (Applicant) v. J J L Rebar (Respondent) (*Endorsed Settlement*)
- 2576-94-G:** The International Brotherhood of Painters and Allied Trades and the Ontario Council of the International Brotherhood of Painters and Allied Trades (Applicant) v. Thiessen Painting and Drywall (Respondent) (*Withdrawn*)
- 2577-94-G:** The International Brotherhood of Painters and Allied Trades and The Ontario Council of The International Brotherhood of Painters and Allied Trades (Applicant) v. Star Painters and Decorators (Respondent) (*Endorsed Settlement*)
- 2586-94-G:** The International Brotherhood of Painters and Allied Trades and the Ontario Council of the International Brotherhood of Painters and Allied Trades (Applicant) v. Johnson Painting (Thunder Bay) (Respondent) (*Endorsed Settlement*)
- 2587-94-G:** The International Brotherhood of Painters and Allied Trades and the Ontario Council of the International Brotherhood of Painters and Allied Trades, Local Union 1891 (Applicant) v. A. C. & I. Services Ltd. (Respondent) (*Withdrawn*)
- 2588-94-G:** The International Brotherhood of Painters and Allied Trades and the Ontario Council of the International Brotherhood of Painters and Allied Trades, Local Union 1891 (Applicant) v. B. & B. Abatement & Insulation (Respondent) (*Withdrawn*)

**2592-94-G:** The International Brotherhood of Painters and Allied Trades and the Ontario Council of the International Brotherhood of Painters and Allied Trades, Local Union 1891 (Applicant) v. Fireproofing Plus Inc. (Respondent) (*Withdrawn*)

**2593-94-G:** The International Brotherhood of Painters and Allied Trades and the Ontario Council of the International Brotherhood of Painters and Allied Trades, Local Union 1891 (Applicant) v. Maran Contracting & Drywall (Pieceworkers) (Respondent) (*Withdrawn*)

**2594-94-G:** The International Brotherhood of Painters and Allied Trades and the Ontario Council of the International Brotherhood of Painters and Allied Trades, Local Union 1891 (Applicant) v. Maran Contracting & Drywall (Respondent) (*Withdrawn*)

**2595-94-G:** The International Brotherhood of Painters and Allied Trades and the Ontario Council of the International Brotherhood of Painters and Allied Trades, Local Union 1891 (Applicant) v. Maxan Drywall Limited (Respondent) (*Withdrawn*)

**2597-94-G:** The International Brotherhood of Painters and Allied Trades and the Ontario Council of the International Brotherhood of Painters and Allied Trades, Local Union 1891 (Applicant) v. Unic Drywall Ltd. (Respondent) (*Withdrawn*)

**2598-94-G:** The International Brotherhood of Painters and Allied Trades and the Ontario Council of the International Brotherhood of Painters and Allied Trades, Local Union 1891 (Applicant) v. Yorkdale Drywall Co. Inc. (Respondent) (*Withdrawn*)

**2601-94-G:** The International Brotherhood of Painters and Allied Trades and the Ontario Council of the International Brotherhood of Painters and Allied Trades (Applicant) v. Busch Painting Limited (Respondent) (*Withdrawn*)

**2603-94-G:** The International Brotherhood of Painters and Allied Trades and the Ontario Council of the International Brotherhood of Painters and Allied Trades (Applicant) v. F.N. Enterprises Ltd. (Respondent) (*Withdrawn*)

**2604-94-G:** The International Brotherhood of Painters and Allied Trades and The Ontario Council of The International Brotherhood of Painters and Allied Trades (Applicant) v. Frank Esposito Decorating Ltd. (Respondent) (*Withdrawn*)

**2605-94-G:** The International Brotherhood of Painters and Allied Trades and the Ontario Council of the International Brotherhood of Painters and Allied Trades (Applicant) v. Galatia Construction (Respondent) (*Withdrawn*)

**2606-94-G; 2607-94-G; 2608-94-G; 2609-94-G:** The International Brotherhood of Painters and Allied Trades and the Ontario Council of the International Brotherhood of Painters and Allied Trades (Applicant) v. J. P. Matte Peintures Ltee. (L.349) (Respondent); The International Brotherhood of Painters and Allied Trades and the Ontario Council of the International Brotherhood of Painters and Allied Trades (Applicant) v. J. P. Matte Peintures Ltee. (Respondent) (*Endorsed Settlement*)

**2612-94-G:** The International Brotherhood of Painters and Allied Trades and The Ontario Council of The International Brotherhood of Painters and Allied Trades (Applicant) v. Jas Decor Inc. (Respondent) (*Withdrawn*)

**2613-94-G:** The International Brotherhood of Painters and Allied Trades and The Ontario Council of the International Brotherhood of Painters and Allied Trades (Applicant) v. Jas Madden Painting & Decorating (Respondent) (*Withdrawn*)

**2620-94-G:** International Brotherhood of Electrical Workers' Local 773 (Applicant) v. Moncur Electric Motors Ltd. (Respondent) (*Withdrawn*)



**2627-94-G:** Ontario Allied Construction Trades Council; and International Brotherhood of Teamsters (Applicant) v. Ontario Hydro; and The Electrical Power Systems Construction Association (Respondents) (*Withdrawn*)

**2646-94-G:** Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Clarke & Adamson Construction Limited (Respondent) (*Endorsed Settlement*)

**2663-94-G:** International Union of Bricklayers and Allied Craftsmen Local 2, Ontario and the Ontario Provincial Conference of The International Union of Bricklayers and Allied Craftsmen (Applicant) v. Inscan Contractors (Ontario) Inc. (Respondent) (*Withdrawn*)

**2675-94-G:** International Association of Bridge, Structural and Ornamental Iron Workers, Local 786 (Applicant) v. Commonwealth Pacific Consultants Limited (Respondent) (*Withdrawn*)

**2679-94-G:** International Brotherhood of Painters and Allied Trades Local 1819 (Applicant) v. Pharmacy Glass & Mirror Ltd. (Respondent) (*Endorsed Settlement*)

**2683-94-G:** Bricklayers, Masons Independent Union of Canada Local 1 (Applicant) v. Disegno Construction Inc. (Respondent) (*Endorsed Settlement*)

**2690-94-G:** Labourers' International Union of North America, Local 837 (Applicant) v. Greenspoon Brothers Limited (Respondent) (*Withdrawn*)

**2705-94-G:** International Union of Bricklayers & Allied Craftsmen Local 28, Ontario (Applicant) v. A. Corsi Masonry (Respondent) (*Withdrawn*)

**2722-94-G:** International Association of Bridge, Structural and Ornamental Iron Workers, Local 721 (Applicant) v. Vout Welding & Fabricating Ltd. (Respondent) (*Endorsed Settlement*)

**2750-94-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Choiceland Contracting Limited (Respondent) (*Endorsed Settlement*)

**2751-94-G:** Labourers' International Union of North America, Local 506 (Applicant) v. Delfino Masonry Limited/1085311 Ontario Inc. (Respondents) (*Granted*)

**2768-94-G:** The United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 463 (Applicant) v. Vincent J. Trudeau & Sons Inc. c.o.b. as Acme Plumbing & Heating and 883553 Ontario Inc. c.o.b. as Acme Bivalent Systems (Respondent) (*Endorsed Settlement*)

**2772-94-G:** United Brotherhood of Carpenters and Joiners of America, Local 494 (Applicant) v. Country Drywall Inc. (Respondent) (*Withdrawn*)

**2779-94-G:** Labourers' International Union of North America, Local 527 (Applicant) v. Dibco Underground Limited (Respondent) (*Withdrawn*)

**2780-94-G:** Labourers' International Union of North America, Local 527 (Applicant) v. C.H. Construction Ltd. (Respondent) (*Withdrawn*)

**2781-94-G:** Labourers' International Union of North America, Local 527 (Applicant) v. A. Zacconi Paving and Construction (Respondent) (*Withdrawn*)

**2790-94-G:** Labourers' International Union of North America, Local 527 (Applicant) v. Diamond Restoration (Respondent) (*Withdrawn*)

**2799-94-G:** Labourers' International Union of North America, Local 527 (Applicant) v. Fontaine Concrete Ltd. (Respondent) (*Withdrawn*)

**2801-94-G:** Labourers' International Union of North America, Local 527 (Applicant) v. Wesbrook Construction (Respondent) (*Withdrawn*)

**2844-94-G:** Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Ell-Rod Holdings Inc. (Respondent) (*Withdrawn*)

**2892-94-G:** International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Stenca/Procon Ltd. (Respondent) (*Withdrawn*)

**2895-94-G:** International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Milan Electric (Respondent) (*Withdrawn*)

**2926-94-G:** Labourers' International Union of North America, Local 183 (Applicant) v. S.H. Carpentry (Respondent) (*Withdrawn*)

**2928-94-G:** Drywall Acoustic Lathing and Insulation Local 675 (Applicant) v. 565897 Ontario Ltd. o/a Modern Drywall (Respondent) (*Endorsed Settlement*)

**2932-94-G:** Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Caulking by Melas Ltd. (Respondent) (*Withdrawn*)

**2952-94-G:** Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Daicon Contractors Inc. (Respondent) (*Withdrawn*)

## APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

**2969-93-U:** Reginald Fitzgerald (Applicant) v. Alex Keeney, Local 200, C.A.W. (Respondent) v. Ford Motor Company Ltd. (Intervener) (*Dismissed*)

**0764-94-OH:** William J. Viveen (Applicant) v. National Steel Car Limited (Respondent) (*Denied*)

**1182-94-G:** International Association of Bridge, Structural and Ornamental Iron Workers, Locals 700 and 721 (Applicant) v. Mac Reinforcing Ltd. and 860716 Ontario Limited (Respondents) (*Denied*)

**1502-94-U:** Rickford Herbert (Applicant) v. National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) (Respondent) (*Denied*)

**1525-94-R:** United Steelworkers of America (Applicant) v. Sears Canada Inc. (Respondent) (*Denied*)

**2117-94-R:** IWA-Canada (Applicant) v. Queen's Landing Inn (Respondent) (*Dismissed*)













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A Monthly Series of Decisions from the  
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## Annual Consolidated Index 1994

EDITOR: RON LEBI

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## CASES REPORTED

Active Mold Plastic Products Ltd.; Re National Automobile, Aerospace and Agricultural Implement Workers Union of Canada .....	(June)	617
Adam Clark Company Ltd., I.B.E.W., Local 530 and; Re L.I.U.N.A., Local 1089 .....	(Jan.)	1
Aluma Systems Canada Inc.; Re LIUNA, Ontario Provincial District Council on behalf of its affiliated Local Unions 183, 247, 491, 493, 506, 527, 597, 607, 625, 837, 1036, 1059, 1081 and 1089; Re Carpenters and Allied Workers Local 27, CJA Local 18 .....	(Nov.)	1469
Amherst Roofing and Sheetmetal Ltd., CJA, Local 93; Re Ontario Sheet Metal Workers' & Roofers' Conference, Sheet Metal Workers' International Association, Local 269 .....	(Apr.)	339
Antoine A. Plennevaux; LIUNA, Local 1036 .....	(May)	593
Aquicon Construction Co. Ltd., Bondfield Construction Company (1983) Limited and 352021 Ontario Limited; Re L.I.U.N.A., Local 837 .....	(Dec.)	1611
Arthur Chen; Re Local 43 Metro Toronto Civic Employees Union CUPE Affiliate; Re The City of Toronto .....	(Sept.)	1184
Associated Contracting Inc.; Re IUOE, Local 793 .....	(Aug.)	951
Associated Contracting Inc.; Re IUOE, Local 793 .....	(Mar.)	197
Avenor Inc.; Re IWA Canada, Local 2693 .....	(Apr.)	340
B & D Insulation Inc.; Re HFIA, Local 95 .....	(Dec.)	1625
B A Banknote a Division of Quebecor Printing Inc.; Re IAM .....	(Nov.)	1484
Babcock & Wilcox, International Division; Re BBF, Lodge 128 .....	(Mar.)	199
Bairrada Masonry Inc.; Re LIUNA, Local 183 .....	(Mar.)	204
Bannerman Enterprises Inc.; Re USWA .....	(Sept.)	1179
Bannerman Enterprises Inc.; Re USWA; Re Group of Employees .....	(Nov.)	1489
Basile Interiors Ltd.; Re PAT, Local 1494 .....	(Aug.)	963
Bayritz Construction Ltd. and Bayritz Masonry Ltd. and Dakota Masonry Ltd. and 986153 Ontario Ltd. c.o.b. as Yellow Brick Masonry and Sundial Bricklayers Inc.; Re BAC; Re LIUNA, Local 183 .....	(Oct.)	1283
Beef Improvement Ontario Incorporated, The Crown in Right of Ontario (as represented by The Ontario Ministry of Agriculture and Food) and Ontario Swine Improvement Ontario Incorporated and; Re OPSEU; Re Group of Employees .....	(Apr.)	341
Bellai Brothers Ltd.; Re LIUNA, Local 247; Re LIUNA, Local 527 .....	(Jan.)	2
Branch 133 Legion Village Inc.; Re UFCW, Local 175 .....	(Aug.)	970
Burns International Security Services Limited; Re USWA; Re Group of Employees .....	(Apr.)	347
CAA Northeastern Ontario Auto Club and Ontario Motor League Worldwide Travel (Sudbury) Inc.; Re USWA .....	(Mar.)	208

Canac Kitchens Limited; Re CJA.....	(Aug.)	972
Canada Stamping and Dies Limited; Re National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) and its Local 636 .....	(Mar.)	213
Canadian Corps of Commissionaires (Toronto and Region); Re USWA .....	(Apr.)	353
Canadian Tire Petroleum; Re UFCW, Local 175 .....	(Apr.)	360
Caterair Chateau Canada Limited; Re Canadian Food and Allied Workers' Union; Re HERE, Local 75 .....	(Apr.)	365
Central Forming & Concrete Inc.; Altracon Construction Limited; Gaspo Construction Limited; Ashworth Engineering Inc.; Re Carpenters and Allied Workers, Local 27, CJA.....	(July)	805
Centre Jubilee Centre; Re USWA, Gerry Loranger, Brian Shell.....	(July)	821
Charterways Transportation Limited, The Corporation of the Town of Ajax; Re National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) and its Local 222 .....	(Oct.)	1296
Checker Limousine and Airport Service, G. Hanlon Holdings Inc., G.J. Hanlon ("Hanlon") and J. Orendorff, 947465 Ontario Ltd., c.o.b. as; Re Retail Wholesale Canada, Canadian Service Sector Division of the United Steelworkers of America, Locals 414, 422, 440, 448, 461, 483, 488, 1000 and 1688 .....	(Aug.)	991
Chicago Blower, Division of Earls court Metal; Re Sheet Metal Workers' International Association, Local 30 .....	(June)	645
Cineplex Odeon Corporation; Re I.A.T.S.E. ....	(Jan.)	25
Cineplex Odeon Corporation; Re I.A.T.S.E. ....	(Jan.)	30
Cineplex Odeon Corporation; Re IATSE .....	(July)	824
Cooper Industries (Canada) Inc.; Re USWA.....	(Mar.)	225
Corporation of the Town of Bothwell; Re Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local No. 880 .....	(Mar.)	237
Covington Clarke; Re Local 400 F.W.D. - International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO/La-Z-Boy Canada Limited.....	(June)	649
Dafoe Floor Concrete Construction Ltd., LIUNA, Local 1059 and; Re OPCM, Local 598 .....	(July)	836
Daniel Adusei and Felicia Adusei; Re ONA; Re Clarke Institute of Psychiatry .....	(May)	519
Davis Distributing Limited; Re Teamsters Local Union No. 419; Re Chandraballi Mussai and Michelle McCready, Group of Employees .....	(Sept.)	1190
Deer Park Villa, West Lincoln Memorial Hospital and West Lincoln Multilevel Health Facility Inc. operating as; Re ONA; Re Niagara Health Care and Service Workers Union Local 302, CLA .....	(Sept.)	1196
Dixie Elevator Ltd.; Re IUEC, Local 50.....	(May)	539
Domus Industries Ltd.; Re PAT, Local Union 1891 .....	(Dec.)	1630
Dover Corporation (Canada) Ltd.; Re IUEC Local 90 .....	(Sept.)	1208

Dualex Enterprises Inc., a division of Depco International Incorporated; Re CAW-Canada; Re Group of Employees..... (Dec.)	1641
Duffy Mechanical Contractors Limited, Durasystems Barriers Inc.; Re SMW, Local 30 ..... (Aug.)	992
Dynamo Masonry Contracting Ltd.; Re BAC, Local 2..... (Apr.)	369
E.S. Fox Limited, Ontario Erectors Association Incorporated; Re BSOIW, Local 700; Re Millwrights District Council of Ontario on its own behalf and on behalf of its Local 1244..... (May)	543
E.S. Fox Limited, UA, Local Union 508; Re Ontario Sheet Metal Workers' & Roofers' Conference, SMW, Local 397 ..... (May)	549
Earnway Industries (Canada) Ltd.; Re IWA Canada..... (Nov.)	1511
Eastern Power Developers Corp.; Re UA, Local Union 46..... (Dec.)	1651
Eastern Welding, 655270 Ontario Inc. c.o.b. as; Re UA, Local Union 819 ..... (June)	673
Elirpa Construction and Materials Limited; Re IUOE, Local 793..... (Apr.)	372
Elirpa Construction and Materials Limited; Re IUOE, Local 793; Re Metropolitan Toronto Sewer and Watermain Contractors Association ..... (July)	838
Elite Show Services; IATSE, Local 58, LIUNA, Local 506, Klanside Inc. and; Re Board of Governors of Exhibition Place ..... (Apr.)	381
Ellis Don Ltd., Groff and Associates Ltd., and the State Group Ltd., LIUNA, Local 506; Re UA, Local 46 and IBEW, Local 353; Re UA, Local 853, HFIA, Local 95 ..... (Sept.)	1222
Ellis-Don Limited; Re LIUNA, Local 1036 and LIUNA Ontario Provincial District Council ..... (Apr.)	386
Ensign Security Services Inc.; Re USWA and Canadian Security Union; Re Pinkerton's of Canada Limited and Burns International Security Services Limited..... (Oct.)	1310
Essex County Board of Education; Re Ontario Secondary School Teachers' Federation..... (Feb.)	129
Euclid-Hitachi Heavy Equipment Ltd.; Re Euclid-Hitachi Employees Association; Re CAW-Canada and its Local 1917..... (Nov.)	1514
Famous Players Inc.; Re IATSE ..... (Nov.)	1527
Famous Players Inc.; Re IATSE, Local 357..... (Feb.)	131
FMG Timberjack Inc.; Re Glass, Molders, Pottery, Plastics & Allied Workers International Union ..... (Oct.)	1333
Foyer Sarsfield Nursing Home, 681356 Ontario Limited c.o.b. as; Re USWA..... (Apr.)	393
FPC Flexible Packaging Corporation; Re Graphic Communications International Union, Local N-1 and Graphic Communications International Union, Local 500M ..... (July)	844
General Signal Limited; Re IBEW, Local 353..... (Mar.)	242
George Jeffrey Children's Treatment Centre; Re SEU, Local 268 ..... (Dec.)	1656
George Lee; Re Local 75, Union Representative Cledwyn Longe ..... (Aug.)	1009
Glazier Medical Centre; Re ONA ..... (Mar.)	249



Glazier Medical Centre; Re National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada); Re Group of Employees .....	(May)	550
Goulard Lumber (1971) Limited, Mark Goulard and Romeo Goulard; Re IWA-Canada, Local 1-2693 and Leo LaFleur .....	(Oct.)	1334
Grant Tadman; Re Ontario English Catholic Teachers' Association Toronto Secondary Unit; Re Metropolitan Separate School Board .....	(Aug.)	1096
Groff & Associates Ltd. and UA, Local 599; Re SMW, Local 30 .....	(July)	846
Group 4 C.P.S. Limited; Re USWA .....	(Apr.)	400
Groupe Schneider S.A., Schneider Canada Inc., Merling Gerin Ltd. (Federal Pioneer Division), and Square D Company of Canada; Re Communications, Energy and Paperworkers Union of Canada, Local 521.....	(Feb.)	142
Guelph Rest Home Incorporated c.o.b. as Heritage House Retirement Home; Re SEIU, Local 532 Affiliated with the A.F. of L., C.I.O., C.L.C.....	(May)	556
Hamilton Program for Schizophrenia Inc.; Re ONA .....	(Mar.)	252
Heritage Green Senior Centre, Saint Elizabeth Home Society, Ontario Ministry of Health and; Re SEIU, Local 532.....	(Apr.)	419
Highland Packers Limited; Re UFCW, AFL, CIO, CLC.....	(Apr.)	434
Hurley Corporation; Re Maria Raposo .....	(Aug.)	1002
Insulec Ltd. Re Communications Energy, and Paperworkers Union of Canada; Re Group of Objecting Employees .....	(Mar.)	254
Intercon Security Limited; Re Communication, Energy and Paperworkers Union of Canada.....	(Sept.)	1228
Isadore Roy Lumber Limited; Re International Union of Woodworkers, Local 2693.....	(Sept.)	1233
James Johnston Mechanical Contracting Ltd.; Re Local Union 47 Sheet Metal Workers' International Association .....	(Dec.)	1671
John Maggio Excavating Ltd.; Re IUOE, Local 793.....	(Jan.)	31
Jose Martins; Re LIUNA, Local 527.....	(May)	560
Journey's End, 772427 - O/L. CDA. Inc. O/A c.o.b. Quality Suites by; Re Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, Local 351.....	(Nov.)	1538
Ken Bodnar Enterprises Inc.; Re USWA; Re Re Group of Employees .....	(June)	688
Kent County Board of Education and the CUPE, Local 2214; Re Ontario Secondary School Teachers' Federation .....	(June)	701
Kent Trusses Limited; Re IWA - Canada.....	(Nov.)	1541
Kids Come First Child Care Centre of Vaughan; Re CUPE .....	(Sept.)	1235
Knob Hill Farms Limited; Re Teamsters Local Union 938; Re Group of Employees .....	(May)	559
Labatt's Ontario Breweries, Division of Labatt Brewing Company Limited; Re IUOE, Local 772; Re Brewery General and Professional Workers' Union .....	(June)	704

Lakehead Roofing and Sheet Metal Co. (1983) Ltd., CJA, Local 1669; Re Ontario Sheet Metal Workers' & Roofers' Conference Sheet Metal Workers' International Association, Local 397.....	(Mar.)	265
Lambton County Health Unit and CUPE, Local 1291; Re ONA.....	(Sept.)	1239
Lencan Investigation Services Inc.; Re USWA.....	(Nov.)	1547
Leo Sakata Electronics (Canada) Ltd.; Re IWA Canada.....	(Oct.)	1359
Leonard A. Vaillant; Re Communications Energy & Paperworkers' Union, Local 39; Re Lakehead Newspaper Ltd. ....	(Nov.)	1596
Long Lake Forest Products Inc., and Kimberly Clark Forest Products Inc.; Re IWA Canada Local 2693; Re Ginoogaming First Nation and Long Lake Employees Association .....	(Oct.)	1343
Longo Brothers Fruit Markets Inc.; Re UFCW, Local 633.....	(Mar.)	266
Louis Lauzon; Re Teamsters, Chauffeurs, Warehousemen and Helpers, Local 91.....	(June)	717
Lutheran Nursing Home (Owen Sound); Re CLC; Re Rosanne Gillard and Sandra Marshall .....	(Oct.)	1362
Maaten Construction Limited; 865541 Ontario Inc.; Re CJA, Local 1256.....	(Apr.)	438
Madawaska Hardwood Flooring Inc.; Re IWA - Canada.....	(Mar.)	267
Maidstone Manufacturing Inc.; Re National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) .....	(Aug.)	1011
Maple Lodge Farms Ltd.; Re Garage Workers Maple Lodge Farms Ltd.; Re UFCW, Local 175 .....	(Oct.)	1371
Maple Lodge Farms; Re Mechanics in Garage Maple Lodge Farm; Re UFCW, Local 175 .....	(Apr.)	447
Mar-Brite Foods Co-Operative Inc.; Re UFCW, AFL-CIO-CLC.....	(Mar.)	270
Marchelino Restaurants, Marchelino Restaurants Ltd. c.o.b. as; Re USWA .....	(Sept.)	1240
Marli Mechanical Ltd.; Re UA, Local Union 46.....	(June)	725
Marriott Corporation (at Carleton University); Re CUPE and its Local 2451.....	(Aug.)	1016
Marriott Corporation (at Carleton University); Re CUPE and its Local 2451.....	(Feb.)	151
Marriott Corporation of Canada; Re OPSEU, Local 241; Re Mohawk College of Applied Arts and Technology.....	(Nov.)	1558
Marriott Management Services; Re CUPE and its Local 229 .....	(Aug.)	1018
Marriott Management Services; Re CUPE and its Local 229 .....	(June)	729
Marriott Management Services; Re Victor Carquez; Re CUPE and Its Local 229 .....	(July)	857
Mary Anne Green, CAW Local 222 Union Member; Re John Caines, CAW Local 222 Union Plant Chairperson; Re General Motors of Canada Limited ("GMCL") .....	(June)	677
McCarthy Milling Limited; Re UFCW, Local 175; Re Adm-Agri Industries Limited .....	(May)	577

Meaford Beaver Valley Community Support Services; Re Sonya Ter Stege; Re OPSEU .....	(Oct.)	1375
Medieval Times Dinner & Tournament (Toronto) Inc.; Re LIUNA, Local 506 .....	(July)	865
Merit Contractors of Niagara, Stewart & Hinan Contractors Limited, Stucor Construction Ltd., David J. Harvey, Dennis R. Kowalchuk and Vernon R. Thorpe c.o.b. as; Re CJA, Local 18 .....	(Feb.)	152
Metroland Printing, Publishing and Distributing Ltd.; Re Southern Ontario Newspaper Guild Local 87, The Newspaper Guild (CLC, AFL-CIO) .....	(Feb.)	160
Metroland Printing, Publishing and Distributing; Re Southern Ontario Newspaper Guild .....	(June)	738
Metropolitan Toronto Apartment Builders' Association; Re LIUNA, Local 183 .....	(Nov.)	1568
Miniworld Management, Operating as North York Infant Nursery and Preschool; Re Madelene Alagano, Catalina Alvarez, Elizabeth Araujo, Eleen Buckley, Suzanna Cabral and Susan Chislett .....	(Apr.)	455
Mirza Alam, Brian Ames, Mahmood Ansari, Mohd Aslam, Bruce Boulton, Robert Campbell, Ashton Caspersz, Jana Cibulka, Ed Foden, Arthur Gleghorn, Nikolas Ilkos, Joe Karol, Steve Kirilovic, Anthony Korsman, Shu-Tak Kwan, Fred La Roche, Mahendar Makim, Carolyn Oaks, Raj Puri, Vince Risi, Phil Russell, Danny Samson, Frank Sindelar, Hank Teeuwissen, Stan Trakalo, Bill Tyndall and Michael Wong; Re Power Workers' Union - CUPE Local 1000; Re Ontario Hydro .....	(June)	627
Mississauga Hydro Electric Company; Re IBEW, Local 636 .....	(July)	883
Mississauga Hydro Electric Company; Re IBEW, Local 636 .....	(Oct.)	1376
MLG Enterprises Limited; Re Jason James .....	(Nov.)	1550
Modern Building Cleaning Inc., Centennial Centre of Science and Technology (The 'Ontario Science Centre') and the individuals listed at schedule 'A'; Re OPSEU .....	(Oct.)	1390
Montgomery Kone Elevator Co.; Re IUEC, Local 50 .....	(Apr.)	462
Multidem Inc., EPSCA, Dominion Metal and Refining Works Ltd., LIUNA, Local, 1059; Re BBF, Local 128; International Brotherhood of Operating Engineers, Local 793; Teamsters' Local 230; BSOIW, Local 736; Re The IBEW Electrical Power Systems Construction Council of Ontario Representing The Following Affiliated Local Unions: 105, 115, 120, 303, 353, 402, 532, 586, 773, 804, 894, 1687, 1739 and 1788; UA, Local 527 .....	(Feb.)	166
Multipak Ltd.; Re Toronto Typographical Union No. 91-0 .....	(July)	884
My Cousin's Restaurant), FJS Holdings (c.o.b. as; Re Hospitality & Service Trades Union Local 261 .....	(Nov.)	1572
N.S. Enterprises Limited; Re National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) .....	(Oct.)	1400
Niagara-on-the-Lake General Hospital; Re ONA .....	(July)	884
Olympia & York Developments Limited; Re Independent Canadian Transit Union and its Local 6 .....	(May)	583
Ombudsman Ontario; Re OPEIU, Local 343 .....	(Dec.)	1679



Ombudsman Ontario; Re OPEIU, Local 343.....	(July)	885
Ontario Hydro and EPSCA and Power Workers' Union; Re IBEW, Local 1788.....	(Oct.)	1404
Ontario Hydro, Electrical Power Systems Construction Association and; Re IBEW, Local 1788, CUPE, Local 1000 .....	(May)	592
Ontario Hydro, EPSCA, CUPE, Local 1000; Re BSOIW, Local 736 .....	(June)	752
Ontario Hydro; Re Eugene Kalwa; Re The Society of Ontario Hydro Professional and Administrative Employees.....	(Mar.)	277
Ontario Hydro; Re Power Workers Union, CUPE Local 1000.....	(June)	765
Otis Canada, Inc., National Elevator and Excaltor Assoc.; Re IUEC Local 50 .....	(Apr.)	469
Ottawa Board of Education; Re CUPE and its Local 1400; Re Education Support Staff Association .....	(Aug.)	1024
Ottawa Board of Education; Re OSSTF .....	(Dec.)	1690
Partek Insulations Ltd.; Re National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) and its Local 456.....	(Feb.)	167
Pharmaphil, a Division of R.P. Scherer Canada Inc.; Re UFCW, Local 175 and 633 .....	(June)	770
Precision Engineering Company Division of PECO Tool and Die Ltd.; Re Mark Desipio .....	(May)	596
Price Club Westminster; Price Club St. Laurent Inc. c.o.b. as; Re UFCW, Local 175 .....	(Aug.)	1029
Public General Hospital Society of Chatham; Re ONA.....	(Feb.)	174
R.J. Chartrand Holdings Limited c.o.b. as Chartrand's Your Independent Grocer; Re UFCW, Local 633; Re Group of Employees.....	(Oct.)	1407
Red Cross Society Ontario Division, The Canadian, Victorian Order of Nurses Brant-Haldimand-Norfolk, Comcare (Canada) Limited, Med Care Partnership, the Visiting Homemakers Association of Hamilton-Wentworth, Hamilton-Wentworth Home Care Program - Victorian Order of Nurses and Victorian Order of Nurses Respite Program, the Regional Municipality of Hamilton-Wentworth, Olsten Health Care Services, Medical Personnel Pool (Hamilton) Ltd., Mohawk Medical Services, Para-Med Health Services and Brant County Home Care Program, Veterans Affairs Canada; Re S.E.I.U., Local 204 and Local 532.....	(Jan.)	34
Reginald Fitzgerald; Re Alex Keeney, Local 200, C.A.W.; Re Ford Motor Company Ltd. ....	(Nov.)	1535
Residence on the St. Clair, Quadrille Development Corporation c.o.b. as The; Re CUPE, Local 3678 .....	(Feb.)	177
Retail, Wholesale Canada, Canadian Service Sector, Division of the USWA, Locals 414, 422, 440, 448, 461, 483, 488, 1000, 1688; Re Primrose G. Short .....	(July)	891
Reynolds-Lemmerz Industries; Re CAW - Canada .....	(Nov.)	1578
Reynolds-Lemmerz Industries; Re National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada); Re Group of Employees .....	(Sept.)	1242
Rheal V. Dionne, Norton Smith, Robert Taylor, Robert Hasie and John A. MacDonald, Robert Burgon, and 91 persons listed on Appendix "A"; Re National Automot-		

bile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) and its Local 199 (St. Catharines) and its Local 1973 (Windsor); Re General Motors of Canada Limited.....	(May)	532
Robert Dumeah; Re BSOIW Local 700, K.E.W. Steel Fabricators Ltd. ....	(June)	655
Robert Hume Construction Ltd.; Re IUOE and its Local 793.....	(Sept.)	1248
Robertson Yates Corporation Limited, United Floor Company Ltd., CJA, Local 785; Re LIUNA, Ontario Provincial District Council, Locals 506 and 1081 .....	(Oct.)	1411
Roy Ayranto Sales Limited; Re USWA; Re Group of Employees .....	(Mar.)	285
Royalguard Vinyl Co., a Division of Royplast Limited; Re Samuel Ofosu Ansah; Re USWA .....	(Aug.)	1057
Royalguard Vinyl Co., a division of Royplast Limited; Re USWA .....	(Jan.)	59
Royalguard Vinyl Co., a Division of Royplast Limited; Re USWA.....	(June)	775
San-Wal Janitorial Ltd.; Re UFCW, Local 175.....	(Apr.)	476
Sanfords Roadhouse Restaurant; Re The Hospitality, Commercial and Service Employees Union, Local 73 .....	(July)	897
Sarnia Wolverine Manufacturing Ltd.; Re UA, Local Union 663 .....	(Jan.)	68
Seeburn Division of Ventra Group Inc.; Re USWA .....	(Nov.)	1585
Select Living (1991) Ltd.; Re Practical Nurses Federation of Ontario .....	(Aug.)	1082
Shelter Canadian Properties Limited; Re USWA .....	(Apr.)	482
Shirlon Plastics Inc.; Re UFCW, AFL/CIO, CLC.....	(Aug.)	1086
Shoppers Drug Mart, Katalin Lanczi Pharmacy Ltd. c.o.b. as; Re Pamela Blais; Re RWDSU, Canadian Service Sector Division of the USWA, Locals 414, 422, 440, 448, 461, 483, 488, 1000 and 1688 .....	(Oct.)	1419
Simcoe Terrace, 601192 Ontario Ltd. c.o.b. as; Re National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada).....	(Feb.)	178
Spencer Construction Company Ltd. and Ian Spencer; Re CJA, Local 2041 .....	(Feb.)	181
Steeles Electric, Eli's Electric Service, Town and Country Electric Ltd., Town and Country Electric, Steeles Electric, E & E Steeles Electric Ltd. c.o.b. as E & E Steeles Electric c.o.b. as; Re IBEW, Local 353 .....	(May)	603
Surex Community Services; Re OPSEU and its Local 5102 .....	(Oct.)	1430
Syl-Shar Holdings Inc.; Re USWA .....	(Nov.)	1591
Tate Andale Canada Inc.; Re USWA .....	(June)	781
The Board of Education for the City of Toronto; Re The OSSTF.....	(Aug.)	1098
The Board of Governors of the Belleville General Hospital; Re ONA.....	(July)	904
The Board of Health for The Peterborough County-City Health Unit; Re The Association of Allied Health Professionals: Ontario, and Ontario Nurses' Association .....	(Mar.)	292
The Brantford General Hospital, St. Joseph's Hospital, Brantford and; Re OPSEU.....	(Aug.)	1103

The Brick Warehouse Corporation; Re SEU Local 268, affiliated with the S.E.I.U., A.F. of L., C.I.O. and C.L.C.....(Aug.)	1116
The Canadian Red Cross Society (Ontario Division); Re SEU, Local 210 .....(Nov.)	1592
The Canadian Red Cross Society; OPSEU; Re Canadian Red Cross Blood Transfusion Service Employees Association.....(Dec.)	1694
The Corporation of the City of Sault Ste. Marie; Re LIUNA, Local 1036.....(Apr.)	496
The Corporation of The City of Scarborough; Re CUPE; Re ONA .....(Mar.)	300
The Corporation of the Town of Innisfil; Re Communications, Energy and Paperwork- ers Union of Canada .....(Jan.)	76
The Governing Council of the Salvation Army in Canada and Bermuda; Re OPSEU .....(Jan.)	85
The Great Atlantic & Pacific Company of Canada Limited, The Partners of Miller Thomson, Barristers and Solicitors, Dirk Van De Kamer; Re UFCW, Locals 175 and 633 .....(July)	909
The Great Atlantic & Pacific Company of Canada Limited; Re UFCW, Locals 175 and 633 and Shelly Fair Service, Scott Constable, Peggy Swift and Gary Dimock .....(Aug.)	1119
The Great Atlantic & Pacific Company of Canada Limited; Re UFCW, Locals 175 and 633, Brian Donaghy, Darrin Fay, Frank Fortunato, Rick Fox, Helmut Halla, Robert Liotti, Donald Lupton, Gene Martin, Pam Murdok, Patricia O'Doherty, Kathy Papa- constantino, Irene Park and Cliff Skinner .....(Mar.)	303
The Great Atlantic & Pacific Company of Canada, Limited; Re RWDSU, AFL-CIO- CLC and its Local affiliates RWDSU AFL-CIO-CLC, Local 414, 429, 545, 579, 582, 915 and 991; Re RWDSU, Canadian Service Sector Division of the U.S.W.A., Local 414 .....(Aug.)	1127
The Great Atlantic and Pacific Company of Canada Limited; Re UFCW, Locals 175 and 633 and Shelly Fair Service, Scott Constable, Peggy Swift and Dimock .....(July)	922
The Hospital for Sick Children; Re CUPE, Local 2816 .....(Sept.)	1255
The Hydro electric commission of The City of Ottawa; Re IBEW, Local 636.....(Sept.)	1265
The Hydro-Electric Commission of the City of Ottawa; Re IBEW, Local 636 .....(Apr.)	516
The Mississauga Hospital; Re The Practical Nurses Federation of Ontario .....(July)	934
The Municipality of Metropolitan Toronto, Metropolitan Toronto Civic Employees' Union, Local 43, and Canadian Union of Public Employees, Local 79; Re Ontario Liquor Boards Employees' Union .....(July)	938
The Municipality of Metropolitan Toronto; Re CUPE, Local 79 .....(June)	795
The Municipality of Metropolitan Toronto; Re Ontario Liquor Boards Employees' Union; Re Metropolitan Toronto Civic Employees' Union, Local 43, CUPE, Local 79 .....(Nov.)	1594
The North Bay Nugget, a division of Southam Inc.; Re North Bay Newspaper Guild, Local 241, The Newspaper Guild (CLC, AFL-CIO).....(Aug.)	1137
The Peel County Restaurant; Re CTCU .....(Feb.)	186
Toromont Industries Ltd., Toromont, a division of; Re The National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) and its Local 112.....(Aug.)	1149



Toronto Area Transit Operating Authority; Re Association of GO Transit Enforcement Officers; Re Amalgamated Transit Union, Local 1587.....	(July)	943
Toronto Transit Commission; Re National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada); Re Amalgamated Transit Union, Local 113; Re Group of Employees .....	(Mar.)	319
Tri-Corps Industrial Contractors, Industrial Labour Corps. Inc., Scotron Holdings Inc., Christman & Leitch Contractors Ltd., Christman & Associates Contractors Ltd.; Re the Millwright District Council of Ontario on its own behalf and on behalf of Local 1916.....	(Oct.)	1446
Trican Materials Ltd. and Dunhill Contracting Ltd.; Re Teamsters Union Local No. 880 .....	(Dec.)	1703
Vistamere Retirement Residence, 678114 Ontario Inc. c.o.b. as; Re Practical Nurses Federation of Ontario.....	(Nov.)	1602
Vistamere Retirement Residence, 678114 Ontario Inc. c.o.b. as; Re Practical Nurses Federation of Ontario.....	(Sept.)	1274
Wackenhut of Canada Limited; Re USWA .....	(Jan.)	91
Wendy's Restaurants of Canada Inc.; Re Rebecca Millar and Stacy Fenn; Re Retail Wholesale Canada, Canadian Service Sector Division of United Steelworkers of America, Local 448 .....	(Dec.)	1708
Westbury Howard Johnson Hotel ["the Westbury"], and H.E.R.E. ["the Parent Union"]; Re H.E.R.E., Local 75 ["Local 75"].....	(Aug.)	1166
William Neilson Ltd.; Re Milk and Bread Drivers, Dairy Employees Caterers and Allied Employees, Local Union No. 647.....	(Mar.)	326
Windsor Elevator Service Inc.; Re International Union of Elevator Constructors, Local No. 90; Re Construction Workers, Local 53, CLAC.....	(Mar.)	334
York University; Re York University Staff Association.....	(Jan.)	96

## COURT PROCEEDINGS

Deloitte & Touche Inc., in its capacity as Court Appointed Receiver and Manager of Ottawa Nursing Centre Nursing Home, and not in its personal capacity; Re CUPE, Local 1343 .....	(Nov.)	1608
E.S. Fox Limited; Re Millwright District Council of Ontario on its own behalf and on behalf of its Local 1007 and OLRB .....	(Nov.)	1609
Ellis-Don Limited; Re the Ontario Labour Relations Board and IBEW, Local 894 .....	(Jan.)	113
Ellis-Don Limited; the OLRB and IBEW, Local 894 .....	(June)	801
Glazier Medical Centre; Re ONA and the OLRB .....	(June)	802
St. Leonard's Society of Metropolitan Toronto and Community Liaison Services and Black Inmates and Friends Assembly, the Crown in Right of Ontario as represented by the Ministry of Correctional Services and; Re OPSEU .....	(Jan.)	126
The Canadian Red Cross Society (Ontario Division); Re Ontario Labour Relations Board and the Service Employees International Union, Locals 204 and 532 .....	(Oct.)	1466
Toronto-Dominion Bank, the; Re CJA, Local 785, Ontario Labour Relations Board, Attorney General of Canada and Attorney General of Ontario .....	(Jan.)	127
Vic West Steel Limited, Ontario Sheet Metal Workers' and Roofers' Conference, Sheet Metal Workers International Association, Local 539 and OLRB; Re CJA, Local 1256 .....	(June)	803





## SUBJECT INDEX

- Abandonment - Accreditation - Bargaining Rights - Collective Agreement - Construction Industry - Construction Industry Grievance - Employer Support - Judicial Review - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractors Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Respondent applying for judicial review on ground that full Board meeting violated rules of natural justice and seeking interim relief - Motions Court judge granting order compelling attendance of chair, vice-chair and registrar before special examiner to obtain information respecting Board procedures - Motion to produce various reports and documents dismissed - Full panel of Divisional Court allowing appeal and setting aside order of motions court judge
- ELLIS-DON LIMITED; RE THE ONTARIO LABOUR RELATIONS BOARD AND IBEW, LOCAL 894.....(Jan.) 113
- Abandonment - Accreditation - Bargaining Rights - Collective Agreement - Construction Industry - Construction Industry Grievance - Employer Support - Judicial Review - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractors Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Respondent applying for judicial review on ground that full Board meeting violated rules of natural justice and seeking interim relief - Motions Court judge granting order compelling attendance of chair, vice-chair and registrar before special examiner to obtain information respecting Board procedures - Motion to produce various reports and documents dismissed - Full panel of Divisional Court allowing appeal and setting aside order of motions court judge - Court of Appeal dismissing motion for leave to appeal
- ELLIS-DON LIMITED; THE OLRB AND IBEW, LOCAL 894..... (June) 801
- Abandonment - Bargaining - Construction Industry - Construction Industry Grievance - Board not persuaded that period of inaction in roads sector between 1988 and 1992 sufficient to warrant finding of abandonment in that sector of bargaining rights granted in multi-sector certificate - Board setting out parties' submissions in respect of whether employer nevertheless bound by "cross-over" clause in collective agreement negotiated by accredited employer organization - Employer arguing that employer association had no right to bargain beyond sector for which it was accredited, at least for non-members - Accredited employer organization given ten working days to indicate whether it wishes to make representations in connection with "cross-over" clause issue
- ELIRPA CONSTRUCTION AND MATERIALS LIMITED; RE IUOE, LOCAL 793 ..... (Apr.) 372
- Abandonment - Bargaining Rights - Construction Industry - Construction Industry Grievance - Road building contractor entering into voluntary recognition agreement with union in

August 1990 - Employer applying collective agreement until September 1991 when it returned to operating as non-union contractor - Union grieving non-compliance with agreement in November 1992 - Board rejecting employer's submission that grievance not arbitrable on basis that union had abandoned bargaining rights

ASSOCIATED CONTRACTING INC.; RE IUOE, LOCAL 793 .....(Aug.) 951

Abandonment - Bargaining Rights - Construction Industry - Reference - Board not persuaded that 15 month delay between no-board report and request for first contract arbitration, of itself, sufficient to warrant conclusion that union abandoned bargaining rights - Board advising Minister of Labour that union's bargaining rights not abandoned

DYNAMO MASONRY CONTRACTING LTD.; RE BAC, LOCAL 2 ..... (Apr.) 369

Abandonment - Bargaining Rights - Crown Transfer - Sale of a Business - Ministry of Health revoking nursing home's licence, taking over nursing home and operating it for 3 years - Ministry of Health calling for and receiving proposals for licensed beds lost due to earlier revocation and awarding beds to a number of licensees, including "HG" - Board finding that part of Crown undertaking had been transferred to "HG", that there were valid bargaining rights to be transferred and that an intermingling of employees had occurred - Board finding that predecessor's collective agreement would have applied at time "HG" started combined operation in 1991 without a vote had *Crown Transfer Act* been applied as it should have been - Evidence not supporting submission that union had abandoned its bargaining rights - Application under *Crown Transfer Act* allowed

HERITAGE GREEN SENIOR CENTRE, SAINT ELIZABETH HOME SOCIETY, ONTARIO MINISTRY OF HEALTH AND; RE SEIU, LOCAL 532 ..... (Apr.) 419

Abandonment - Bargaining Rights - Sale of a Business - Union alleging that transfer of inactive sawmill amounting to sale of a business - Alleged successor employer arguing that union had abandoned its bargaining rights before the transfer and that it had purchased mere "assets", not a "business" - Collective agreement made in 1984 terminated and no replacement or renewal agreement entered into - Evidence of union's continuing interest and activity satisfying Board that union had not abandoned bargaining rights - Seven year hiatus between closure of mill and sale not detracting from conclusion that successor purchasing capacity to carry on the business formerly conducted by predecessor in relation to the mill - Board declaring that union continuing to be bargaining agent in respect of sawmill operations as if successor were predecessor

LONG LAKE FOREST PRODUCTS INC., AND KIMBERLY CLARK FOREST PRODUCTS INC.; RE IWA CANADA LOCAL 2693; RE GINOOGAMING FIRST NATION AND LONG LAKE EMPLOYEES ASSOCIATION ..... (Oct.) 1343

Abandonment - Construction Industry - Construction Industry Grievance - Employer alleging abandonment of bargaining rights in context of union's grievance referral - Board denying union's preliminary objections to effect that issue of abandonment *res judicata* and that employer could not establish *prima facie* case

ASSOCIATED CONTRACTING INC.; RE IUOE, LOCAL 793 .....(Mar.) 197

Accreditation - Abandonment - Bargaining Rights - Collective Agreement - Construction Industry - Construction Industry Grievance - Employer Support - Judicial Review - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractors Association not signifying abandonment of bargaining rights - Respondent bound by pro-

vincial ICI agreement - Grievance allowed - Respondent applying for judicial review on ground that full Board meeting violated rules of natural justice and seeking interim relief - Motions Court judge granting order compelling attendance of chair, vice-chair and registrar before special examiner to obtain information respecting Board procedures - Motion to produce various reports and documents dismissed - Full panel of Divisional Court allowing appeal and setting aside order of motions court judge

ELLIS-DON LIMITED; RE THE ONTARIO LABOUR RELATIONS BOARD AND IBEW, LOCAL 894.....(Jan.)

113

Accreditation - Abandonment - Bargaining Rights - Collective Agreement - Construction Industry - Construction Industry Grievance - Employer Support - Judicial Review - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractors Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Respondent applying for judicial review on ground that full Board meeting violated rules of natural justice and seeking interim relief - Motions Court judge granting order compelling attendance of chair, vice-chair and registrar before special examiner to obtain information respecting Board procedures - Motion to produce various reports and documents dismissed - Full panel of Divisional Court allowing appeal and setting aside order of motions court judge - Court of Appeal dismissing motion for leave to appeal

ELLIS-DON LIMITED; THE OLRB AND IBEW, LOCAL 894..... (June)

801

Adjournment - Bargaining Unit - Certification - Practice and Procedure - Reconsideration - Employer operating private medical centre - Board earlier finding nurses' bargaining unit to be appropriate for collective bargaining and determining that ONA to be issued certificate - Employer seeking reconsideration of that decision - CAW subsequently applying for certification in respect of all-employee unit excluding nurses - In CAW application, employer proposing all-employee unit (with no exclusion for nurses) or, alternatively, one excluding medical technologists and technicians as well as nurses - Certain employees supporting employer's alternative position on bargaining unit - Board declining to adjourn CAW application pending reconsideration decision in respect of ONA application - Board finding CAW's proposed bargaining unit appropriate - Certificate issuing - Employer's reconsideration application in respect of CAW application dismissed

GLAZIER MEDICAL CENTRE; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA); RE GROUP OF EMPLOYEES..... (May)

550

Adjournment - Construction Industry - Construction Industry Grievance - Jurisdictional Dispute - Parties - Practice and Procedure - Board rejecting employer's motion that Board defer consideration of grievance to allow it to file jurisdictional dispute complaint - Board noting that parties had not addressed whether employer's unrepresented labourers, Labourers' union, or other contractors have status to intervene in the proceeding

SARNIA WOLVERINE MANUFACTURING LTD.; RE UA, LOCAL UNION 663 .....(Jan.)

68

Adjournment - Construction Industry - Evidence - Judicial Review - Jurisdictional Dispute - Natural Justice - Practice and Procedure - Witness - Carpenters' and Sheet Metal Workers' unions disputing assignment of work in connection with handling, distribution, rigging, erection and installation of sheet metal siding onto wood - Board confirming assignment to



members of Sheet Metal Workers' union - Board summarizing various evidentiary and procedural rulings made during lengthy proceeding - Board not allowing Carpenters' union to call area practice evidence to the extent that its materials had not been properly particularized - Board not permitting Sheet Metal Workers' union to call witness who had already once testified - Other than in reply, a party should not be permitted to recall a witness except in extraordinary circumstances - Carpenters' union moving to terminate proceedings after 10 days of hearing following settlement of its grievance (which constituted initial demand for work in dispute) - Motion to terminate proceedings dismissed - Board noting that jurisdictional dispute proceedings should not generally be terminated after hearing on the merits has begun where it is clear that jurisdictional dispute still exists - Carpenters' union applying for judicial review on grounds of alleged denial of natural justice - Divisional Court dismissing application with costs

VIC WEST STEEL LIMITED, ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE, SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL 539 AND OLRB; RE CJA, LOCAL 1256..... (June)

803

Adjournment Construction Industry - Construction Industry Grievance - Jurisdictional Dispute - Practice and Procedure - Ironworkers' union grieving failure to assign its members certain work - Millwrights' union seeking to intervene - Millwrights' submitting that grievance inarbitrable because Ironworkers' asking Board to enforce order made in *The State Group* case and because dispute raised in grievance is jurisdictional dispute - Board adjourning section 126 proceeding pending filing and disposition of jurisdictional dispute complaint under section 95 of the *Act*

E.S. FOX LIMITED, ONTARIO ERECTORS ASSOCIATION INCORPORATED; RE BSOIW, LOCAL 700; RE MILLWRIGHTS DISTRICT COUNCIL OF ONTARIO ON ITS OWN BEHALF AND ON BEHALF OF ITS LOCAL 1244..... (May)

543

Adjustment Plan - Duty to Bargain in Good Faith - Practice and Procedure - Unfair Labour Practice - Union alleging that employer breaching duty to bargain in good faith and make every reasonable effort to negotiate adjustment plan - Subsequent to hearing of complaint, and while decision pending, Board informed by employer that parties had reached collective agreement including terms on certain adjustment issues and that application rendered moot - Union disputing employer's position - Board dismissing application on grounds on mootness, and on grounds that it would serve no labour relations purpose to inquire further into application because no remedial relief would be ordered

ONTARIO HYDRO; RE POWER WORKERS UNION, CUPE LOCAL 1000 ..... (June)

765

Bargaining - Abandonment - Construction Industry - Construction Industry Grievance - Board not persuaded that period of inaction in roads sector between 1988 and 1992 sufficient to warrant finding of abandonment in that sector of bargaining rights granted in multi-sector certificate - Board setting out parties' submissions in respect of whether employer nevertheless bound by "cross-over" clause in collective agreement negotiated by accredited employer organization - Employer arguing that employer association had no right to bargain beyond sector for which it was accredited, at least for non-members - Accredited employer organization given ten working days to indicate whether it wishes to make representations in connection with "cross-over" clause issue

ELIRPA CONSTRUCTION AND MATERIALS LIMITED; RE IUOE, LOCAL 793..... (Apr.)

372

Bargaining Rights - Abandonment - Accreditation - Collective Agreement - Construction Industry - Construction Industry Grievance - Employer Support - Judicial Review - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement

not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractors Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Respondent applying for judicial review on ground that full Board meeting violated rules of natural justice and seeking interim relief - Motions Court judge granting order compelling attendance of chair, vice-chair and registrar before special examiner to obtain information respecting Board procedures - Motion to produce various reports and documents dismissed - Full panel of Divisional Court allowing appeal and setting aside order of motions court judge

ELLIS-DON LIMITED; RE THE ONTARIO LABOUR RELATIONS BOARD AND IBEW, LOCAL 894.....(Jan.)

113

Bargaining Rights - Abandonment - Accreditation - Collective Agreement - Construction Industry - Construction Industry Grievance - Employer Support - Judicial Review - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractors Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Respondent applying for judicial review on ground that full Board meeting violated rules of natural justice and seeking interim relief - Motions Court judge granting order compelling attendance of chair, vice-chair and registrar before special examiner to obtain information respecting Board procedures - Motion to produce various reports and documents dismissed - Full panel of Divisional Court allowing appeal and setting aside order of motions court judge - Court of Appeal dismissing motion for leave to appeal

ELLIS-DON LIMITED; THE OLRB AND IBEW, LOCAL 894.....(June)

801

Bargaining Rights - Abandonment - Construction Industry - Construction Industry Grievance - Road building contractor entering into voluntary recognition agreement with union in August 1990 - Employer applying collective agreement until September 1991 when it returned to operating as non-union contractor - Union grieving non-compliance with agreement in November 1992 - Board rejecting employer's submission that grievance not arbitrable on basis that union had abandoned bargaining rights

ASSOCIATED CONTRACTING INC.; RE IUOE, LOCAL 793.....(Aug.)

951

Bargaining Rights - Abandonment - Construction Industry - Reference - Board not persuaded that 15 month delay between no-board report and request for first contract arbitration, of itself, sufficient to warrant conclusion that union abandoned bargaining rights - Board advising Minister of Labour that union's bargaining rights not abandoned

DYNAMO MASONRY CONTRACTING LTD.; RE BAC, LOCAL 2.....(Apr.)

369

Bargaining Rights - Abandonment - Crown Transfer - Sale of a Business - Ministry of Health revoking nursing home's licence, taking over nursing home and operating it for 3 years - Ministry of Health calling for and receiving proposals for licensed beds lost due to earlier revocation and awarding beds to a number of licensees, including "HG" - Board finding that part of Crown undertaking had been transferred to "HG", that there were valid bargaining rights to be transferred and that an intermingling of employees had occurred - Board finding that predecessor's collective agreement would have applied at time "HG" started combined operation in 1991 without a vote had *Crown Transfer Act* been applied as

it should have been - Evidence not supporting submission that union had abandoned its bargaining rights - Application under *Crown Transfer Act* allowed

HERITAGE GREEN SENIOR CENTRE, SAINT ELIZABETH HOME SOCIETY,  
ONTARIO MINISTRY OF HEALTH AND; RE SEIU, LOCAL 532 ..... (Apr.)

419

Bargaining Rights - Abandonment - Sale of a Business - Union alleging that transfer of inactive sawmill amounting to sale of a business - Alleged successor employer arguing that union had abandoned its bargaining rights before the transfer and that it had purchased mere "assets", not a "business" - Collective agreement made in 1984 terminated and no replacement or renewal agreement entered into - Evidence of union's continuing interest and activity satisfying Board that union had not abandoned bargaining rights - Seven year hiatus between closure of mill and sale not detracting from conclusion that successor purchasing capacity to carry on the business formerly conducted by predecessor in relation to the mill - Board declaring that union continuing to be bargaining agent in respect of sawmill operations as if successor were predecessor

LONG LAKE FOREST PRODUCTS INC., AND KIMBERLY CLARK FOREST  
PRODUCTS INC.; RE IWA CANADA LOCAL 2693; RE GINOOGAMING FIRST  
NATION AND LONG LAKE EMPLOYEES ASSOCIATION ..... (Oct.)

1343

Bargaining Rights - Bargaining Unit - Certification - Pre-Hearing Vote - Applicant union proposing single "all employee" bargaining unit - Incumbent union asserting that separate units of Registered Nurses and Registered Nursing Assistants and of all other employees appropriate - Applicant's proposed unit found to be appropriate - Board directing that ballots cast in pre-hearing vote be counted

SIMCOE TERRACE, 601192 ONTARIO LTD. C.O.B. AS; RE NATIONAL AUTO-  
MOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION  
OF CANADA (CAW-CANADA)..... (Feb.)

178

Bargaining Rights - Bargaining Unit - Sale of a Business - St. Joseph's Hospital transferring laboratory services to Brantford General Hospital - Hospitals acknowledging that transfer constituting "sale of a business" - Board finding intermingling of employees and determining that unit of all paramedical employees (and not only those employed in "stat" laboratory) constituting appropriate bargaining unit - Transferred employees representing less than 5 percent of all paramedical employees of Brantford General Hospital - Board declining to direct taking of representation vote - Board declaring that union no longer the bargaining agent for any Brantford General Hospital laboratory employees

THE BRANTFORD GENERAL HOSPITAL, ST. JOSEPH'S HOSPITAL, BRANT-  
FORD AND; RE OPSEU.....(Aug.)

1103

Bargaining Rights - Crown Transfer - Judicial Review - Ministry of Correctional Services contracting with several community organizations to provide various services to inmates including discharge planning, cultural liaison, and counselling - Whether each contract constituting transfer of part of Crown's "undertaking" to the community agency - Board not persuaded that the right to perform particular services created by subcontract is "part" of Crown's "undertaking" to which bargaining rights attach or which create successor ship on execution of contract - Crown transfer application dismissed by Board - Divisional Court dismissing union's application for judicial review

ST. LEONARD'S SOCIETY OF METROPOLITAN TORONTO AND COMMUNITY  
LIAISON SERVICES AND BLACK INMATES AND FRIENDS ASSEMBLY, THE  
CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF  
CORRECTIONAL SERVICES AND; RE OPSEU .....(Jan.)

126

Bargaining Rights - Related Employer - Public hospital setting up nursing home in 1984 and establishing it as separate corporate entity - ONA certified in 1987 to represent nurses



employed at hospital and in 1992 to represent nurses employed at nursing home - ONA applying to have hospital and nursing home declared related employers in order to meet nursing home's "ability to pay" argument in interest arbitration - Board unable to find that nursing home acting as nurses' employer in name only or that hospital possessing real economic control over nursing home's nurses - Application dismissed

DEER PARK VILLA, WEST LINCOLN MEMORIAL HOSPITAL AND WEST LINCOLN MULTILEVEL HEALTH FACILITY INC. OPERATING AS; RE ONA; RE NIAGARA HEALTH CARE AND SERVICE WORKERS UNION LOCAL 302, CLA..... (Sept.)

1196

Bargaining Rights - Related Employer - Remedies - Company "A" acquiring companies "B" and "C" - Union holding bargaining rights at one of B's locations - A consolidating warehouse operations at C's location - B's unionized work transferred to C's non-union workforce, but no employees of B actually transferred - Collective agreement providing that where part of operation transferred to new location within 50 mile radius of plant, employer will recognize union as bargaining agent for those operations - Union seeking single employer declaration - Employer asking Board to exercise its discretion against making the declaration - Board declaring companies A, B and C to be one employer for purposes of the *Act*, but restricting declaration to warehouse operations at company B location

GROUPE SCHNEIDER S.A., SCHNEIDER CANADA INC., MERLING GERIN LTD. (FEDERAL PIONEER DIVISION), AND SQUARE D COMPANY OF CANADA; RE COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA, LOCAL 521..... (Feb.)

142

Bargaining Unit - Adjournment - Certification - Practice and Procedure - Reconsideration - Employer operating private medical centre - Board earlier finding nurses' bargaining unit to be appropriate for collective bargaining and determining that ONA to be issued certificate - Employer seeking reconsideration of that decision - CAW subsequently applying for certification in respect of all-employee unit excluding nurses - In CAW application, employer proposing all-employee unit (with no exclusion for nurses) or, alternatively, one excluding medical technologists and technicians as well as nurses - Certain employees supporting employer's alternative position on bargaining unit - Board declining to adjourn CAW application pending reconsideration decision in respect of ONA application - Board finding CAW's proposed bargaining unit appropriate - Certificate issuing - Employer's reconsideration application in respect of CAW application dismissed

GLAZIER MEDICAL CENTRE; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA); RE GROUP OF EMPLOYEES..... (May)

550

Bargaining Unit - Bargaining Rights - Certification - Pre-Hearing Vote - Applicant union proposing single "all employee" bargaining unit - Incumbent union asserting that separate units of Registered Nurses and Registered Nursing Assistants and of all other employees appropriate - Applicant's proposed unit found to be appropriate - Board directing that ballots cast in pre-hearing vote be counted

SIMCOE TERRACE, 601192 ONTARIO LTD. C.O.B. AS; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA)..... (Feb.)

178

Bargaining Unit - Bargaining Rights - Sale of a Business - St. Joseph's Hospital transferring laboratory services to Brantford General Hospital - Hospitals acknowledging that transfer constituting "sale of a business" - Board finding intermingling of employees and determining that unit of all paramedical employees (and not only those employed in "stat" laboratory) constituting appropriate bargaining unit - Transferred employees representing less than 5 percent of all paramedical employees of Brantford General Hospital - Board declin-

ing to direct taking of representation vote - Board declaring that union no longer the bargaining agent for any Brantford General Hospital laboratory employees

THE BRANTFORD GENERAL HOSPITAL, ST. JOSEPH'S HOSPITAL, BRANTFORD AND; RE OPSEU.....(Aug.) 1103

Bargaining Unit - Build-Up - Certification - Board rejecting employer's submission that it apply build-up principle and direct representation vote, rather than automatically certifying union enjoying support of more than 55% of employees in unit - At maximum, build-up would consist of five employees to the nine employees in bargaining unit at time of application - Board not finding it appropriate to take into account seasonal fluctuations in work force in applying build-up principle - Certificate issuing

KIDS COME FIRST CHILD CARE CENTRE OF VAUGHAN; RE CUPE..... (Sept.) 1235

Bargaining Unit - Certification - Board considering two certification applications filed by IATSE - In first application, union seeking to represent "front-of-house" staff in municipal unit - In second application, union proposing site-specific unit - Employer proposing single bargaining unit made up of employees in Greater Toronto Area or, alternatively, two municipal units - Board applying *Famous Players* case and finding union's proposed bargaining units appropriate - Certificates issuing

CINEPLEX ODEON CORPORATION; RE I.A.T.S.E. ....(Jan.) 25

Bargaining Unit - Certification - Board not persuaded that union's "motivation" for organizing employees relevant to issue of bargaining unit description - Board applying *Famous Players* case and finding union's proposed site-specific bargaining unit appropriate - Certificate issuing

CINEPLEX ODEON CORPORATION; RE I.A.T.S.E. ....(Jan.) 30

Bargaining Unit - Certification - Board not persuaded that union's proposed bargaining unit restricted to teachers of Adult Basic English and English as a Second Language an appropriate bargaining unit

OTTAWA BOARD OF EDUCATION; RE OSSTF.....(Dec.) 1690

Bargaining Unit - Certification - Combination of Bargaining Units - Security Guard - Union seeking to combine newly certified unit of security guards with pre-existing all-employee unit of municipality's employees - Parties requesting that Board first determine whether security guards monitor other employees so as to give rise to conflict of interest if included in those employees' bargaining unit - Board satisfied that monitoring of other employees by guards raising real possibility of conflict of interest if guards included in same bargaining unit - Application remitted back to parties

THE MUNICIPALITY OF METROPOLITAN TORONTO; RE CUPE, LOCAL 79..... (June) 795

Bargaining Unit - Certification - Combination of Bargaining Units - Union already representing certain employees of employer - Union applying for certification in respect of tag-end municipal unit - Employer urging Board to create four separate bargaining units designated by street address and function - Employer submitting that part of employer's organization might be found to be "hospital" within meaning of *Hospital Labour Disputes Arbitration Act (HLDAA)* - Board finding *HLDAA* concern to be speculative and not persuaded that employees covered by *HLDAA* must be included in separate unit - Board observing that more comprehensive unit usually appropriate unless serious labour relations problems demonstrably overwhelm difficulties associated with fragmentation or unless larger unit is idiosyncratic or perverse - Board noting that more comprehensive unit presumptively appropriate, if that is what union has organized and applied for - Union's proposed unit

found to be appropriate - Certificate issuing - On agreement of parties, Board directing that newly-certified bargaining unit should be combined with unit already represented by union

THE GOVERNING COUNCIL OF THE SALVATION ARMY IN CANADA AND BERMUDA; RE OPSEU .....(Jan.)

85

Bargaining Unit - Certification - Combination of Bargaining Units - Union already representing full-time production and non-production employees in separate units with geographic description covering Province of Ontario - Union applying to be certified for single unit of part-time employees covering Province of Ontario - Employer without employees at locations other than North Bay and Sturgeon Falls - Board finding single bargaining unit of part-time employees in North Bay and Sturgeon Falls to be appropriate - Interim certificate issuing - Union applying to combine the units - Board rejecting employer's submission that serious labour relations problem created by shift in bargaining power or possibility that printing operation and newspaper operation would both be shut down in event of strike - Board directing that two full-time units be combined with interim certified part-time unit

THE NORTH BAY NUGGET, A DIVISION OF SOUTHAM INC.; RE NORTH BAY NEWSPAPER GUILD, LOCAL 241, THE NEWSPAPER GUILD (CLC, AFL-CIO) .....(Aug.)

1137

Bargaining Unit - Certification - Constitutional Law - Charter of Rights and Freedoms - Employee - Membership Evidence - Board determining that section 8(4) of the *Act* not violating freedoms of expression, association and right to equal treatment set out in *Charter* - Board dismissing employees' objections to validity of trade union's membership evidence - Board finding union's proposed "all employee" unit appropriate and rejecting employer's assertion that the retail and service components of its business so distinct that employees in those components not sharing community of interests - Board finding "hardware department manager" to be "employee" within meaning of the *Act* - Certificate issuing

KEN BODNAR ENTERPRISES INC.; RE USWA; RE GROUP OF EMPLOYEES.....(June)

688

Bargaining Unit - Certification - Employee - Board finding "shift supervisors" to be employees within meaning of the *Act* - Employer and union disputing description of appropriate bargaining unit - Union proposing unit excluding office and sales staff - Employer asserting that excluding office and sales staff would not reflect communities of interest in plant and would lead to serious labour relations problems - Board finding reference to "community of interest" to be unhelpful - Board's focus should be upon evidence of concrete, demonstrable problems which will result from applicant's proposed unit - Board finding union's proposed unit appropriate

ACTIVE MOLD PLASTIC PRODUCTS LTD.; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA .....(June)

617

Bargaining Unit - Certification - Employee - Deputy Treasurer and Works Supervisor employed by municipality found to be 'employees' within meaning of *Act* and included in bargaining unit - Certificate issuing

CORPORATION OF THE TOWN OF BOTHWELL; RE TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, LOCAL NO. 880.....(Mar.)

237

Bargaining Unit - Certification - Employee - Employee Reference - Practice and Procedure - Union applying for certification and both union and employer participating in waiver process - Union making no challenges to list of employees filed by employer and Officer subsequently announcing the count - Employee list not including four Regional Managers - Union and employer subsequently agreeing on bargaining unit description, but union advising Board that parties disputing whether Regional Managers should be included in bargain-



ing unit - Union asking Board to appoint officer under section 108(2) of the *Act* - Employer objecting to request under section 108(2) as untimely, prejudicial and an abuse of waiver and certification procedure - Board holding that union and employer bound by agreements made in waiver process, including agreements on list of employees in bargaining unit and on geographic scope of bargaining unit - Certificate issuing - Request under section 108(2) not considered by panel in context of certification application

CAA NORTHEASTERN ONTARIO AUTO CLUB AND ONTARIO MOTOR  
LEAGUE WORLDWIDE TRAVEL (SUDBURY) INC.; USWA.....(Mar.)

208

Bargaining Unit - Certification - Employee - Practice and Procedure - Representation Vote - Parties disputing status of certain individuals - Board rejecting union's submission that doctrines of *res judicata* or issue estoppel applying to prevent employer from taking position different from position taken in union's earlier certification application - Board rejecting employer's submission that in circumstances of the case, including its assertion that union's support barely over 55%, representation vote should be ordered - Board revoking appointment of Labour Relations Officer and directing hearing before panel of Board in order to expedite resolution of bargaining unit configuration issues

REYNOLDS-LEMMERZ INDUSTRIES; RE NATIONAL AUTOMOBILE, AERO-  
SPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA  
(CAW-CANADA); RE GROUP OF EMPLOYEES.....(Sept.)

1242

Bargaining Unit - Certification - Employee - Security Guards - Board determining that "site supervisors" employed by security firm not exercising managerial functions within meaning of section 1(3) of the *Act* - "Site supervisors" included in bargaining unit - Final certificate issuing

WACKENHUT OF CANADA LIMITED; RE USWA .....(Jan.)

91

Bargaining Unit - Certification - Employer agricultural co-operative owned by 300 apple and tomato farmers - Co-op operating plant involved in squeezing and canning apple and tomato juice - Employer submitting that its employees employed in agriculture and that *Labour Relations Act* not applying - Board finding that cannery employees not employed in agriculture - Employer seeking to exclude seasonal workers from union's proposed all-employee bargaining unit where application not brought 'in season' - Board finding union's proposed all-employee unit appropriate - Certificate issuing

MAR-BRITE FOODS CO-OPERATIVE INC.; RE UFCW, AFL-CIO-CLC.....(Mar.)

270

Bargaining Unit - Certification - Employer and union disputing whether bargaining unit had been agreed to in waiver process - Employer proposing bargaining unit excluding part-time employees and students - Board not conclusively determining whether bargaining unit had been agreed to, having concluded that union's proposed unit appropriate - Board further finding that employer's position on bargaining unit untenable given language of section 6(2.1) of the *Act* - Certificate issuing

GUELPH REST HOME INCORPORATED C.O.B. AS HERITAGE HOUSE  
RETIREMENT HOME; RE SEIU, LOCAL 532 AFFILIATED WITH THE A.F. OF L.,  
C.I.O., C.L.C.....(May)

556

Bargaining Unit - Certification - Employer engaged in manufacture and sale of roof trusses and operating plant in Township of Strong and yard in Town of Sunridge - Union applying to represent employees at plant only - Employer submitting that unit should include both plant and yard employees - Board finding union's proposed unit appropriate - Certificate issuing

KENT TRUSSES LIMITED; RE IWA - CANADA.....(Nov.)

1541

Bargaining Unit - Certification - Judicial Review - Practice and Procedure - Stay - Following par-

participation in certification waiver programme and after agreeing on a number of issues related to union's certification application (including bargaining unit description), parties apparently agreeing to waive hearing - Legal identity of employer only issue apparently outstanding - Employer subsequently retaining new counsel, seeking to file additional materials and advising Board of its intention to attend officer meeting and Board hearing - Employer asking Board to find appropriate bargaining unit to be one other than that which had earlier been agreed to by the parties - Employer relying on fact that Waiver of Hearing Form A-5 not submitted for proposition that it had not agreed to waive hearing - Board not permitting employer to resile from agreement on bargaining unit - Board finding agreed-upon unit appropriate - Board indicating that it will consider employer request, if made, for hearing on question of legal identity of employer - Employer applying for judicial review on ground that Board declined jurisdiction to determine appropriate bargaining unit - Employer applying for stay pending judicial review - Stay application dismissed by Divisional Court

GLAZIER MEDICAL CENTRE; RE ONA AND THE OLRB..... (June) 802

Bargaining Unit - Certification - Membership Evidence - Employer operating restaurant in downtown Ottawa - Union seeking municipality-wide bargaining unit - Employer proposing site-specific unit - Board finding union's proposed unit appropriate - Union submitting card bearing no indication as to date on which it was signed - Board hearing evidence with respect to circumstances of signature on membership evidence and satisfying itself that card signed within six month period proceeding application date - Certificate issuing

MARCHELINO RESTAURANTS, MARCHELINO RESTAURANTS LTD. C.O.B. AS; RE USWA..... (Sept.) 1240

Bargaining Unit - Certification - ONA applying for unit of nurses employed as Case Managers - Employer proposing unit of Case Managers irrespective of their professional qualifications - Board finding unit of all Case Managers appropriate - Certificate issuing

HAMILTON PROGRAM FOR SCHIZOPHRENIA INC.; ONA ..... (Mar.) 252

Bargaining Unit - Certification - OPSEU applying to displace incumbent employees' association - OPSEU asking to be certified in respect of single bargaining unit including full-time and part-time employees - Board finding that incumbent union holding bargaining rights in respect of separate bargaining units for full-time and part-time employees - Board finding that OPSEU's proposed bargaining unit appropriate - Board also finding that ballots of probationary employees cast in pre-hearing representation vote ought to be counted

THE CANADIAN RED CROSS SOCIETY; OPSEU; RE CANADIAN RED CROSS BLOOD TRANSFUSION SERVICE EMPLOYEES ASSOCIATION ..... (Dec.) 1694

Bargaining Unit - Certification - Petition - Employer operating separate 'electrical' and 'bottle cap' divisions out of separate buildings with separate street addresses on one site - Union applying for certification and proposing bargaining unit including employees of both divisions - Employer taking position that separate units appropriate - Board not satisfied that more comprehensive unit would cause serious labour relations problems - Union's proposed unit found appropriate - Board not satisfied that petition reflecting voluntary wishes of the employees who signed them - Certificate issuing

INSULEC LTD. RE COMMUNICATIONS ENERGY, AND PAPERWORKERS UNION OF CANADA; RE GROUP OF OBJECTING EMPLOYEES..... (Mar.) 254

Bargaining Unit - Certification - Practice and Procedure - Following participation in certification waiver programme and after agreeing on a number of issues related to union's certification application (including bargaining unit description), parties apparently agreeing to waive hearing - Legal identity of employer only issue apparently outstanding - Employer subsequently retaining new counsel, seeking to file additional materials and advising Board of its

intention to attend officer meeting and Board hearing - Employer asking Board to find appropriate bargaining unit to be one other than that which had earlier been agreed to by the parties - Employer relying on fact that Waiver of Hearing Form A-5 not submitted for proposition that it had not agreed to waive hearing - Board not permitting employer to resile from agreement on bargaining unit - Board finding agreed-upon unit appropriate - Board indicating that it will consider employer request, if made, for hearing on question of legal identity of employer

GLAZIER MEDICAL CENTRE; ONA.....(Mar.) 249

Bargaining Unit - Certification - Security Guard - Union applying to represent employees of security company - Union proposing that bargaining unit encompass all employees and employer proposing that unit be confined to security guards - Union asserting that unit should be limited to Regional Municipality of Sudbury and employer asserting that unit should encompass entire District of Sudbury - Board reviewing principles to be applied in determining bargaining unit appropriateness - Board observing that all employees share "community of interest" by virtue of working for same employer and that "real life collective bargaining" able to accommodate groups with very different duties and conditions - Union's proposed bargaining unit found to be appropriate - Certificate issuing

BURNS INTERNATIONAL SECURITY SERVICES LIMITED; RE USWA; RE GROUP OF EMPLOYEES .....(Apr.) 347

Bargaining Unit - Certification - Security Guards - Union applying to represent employer's security guards - Union already representing employees of employer in one of ten existing bargaining units - Board rejecting employer's argument that bargaining unit of security guards inappropriate if represented by any of various bargaining agents already representing other company employees, but particularly the applicant - Certificate issuing

B A BANKNOTE A DIVISION OF QUEBECOR PRINTING INC.; RE IAM .....(Nov.) 1484

Bargaining Unit - Certification - Union applying to represent employees of respondent hotel and proposing bargaining unit excluding front desk staff - Employer proposing that front desk staff be included in unit on basis of its assertion that front desk employees spend 25 per cent of their time performing work ordinarily performed by members of union's proposed bargaining unit - Board finding union's proposed unit appropriate - Certificate issuing

JOURNEY'S END, 772427 - O/L. CDA. INC. O/A C.O.B. QUALITY SUITES BY; RE TEXTILE PROCESSORS, SERVICE TRADES, HEALTH CARE, PROFESSIONAL AND TECHNICAL EMPLOYEES INTERNATIONAL UNION, LOCAL 351 .....(Nov.) 1538

Bargaining Unit - Certification - Union applying to represent unit of meat department employees in grocery store - Employer submitting that 'craft' unit not appropriate because employees no longer exercising technical skills distinguishing them from other employees within meaning of section 6(3) of the *Act* - Board finding union's proposed unit appropriate - Certificate issuing

LONGO BROTHERS FRUIT MARKETS INC.; RE UFCW, LOCAL 633.....(Mar.) 266

Bargaining Unit - Certification - Union earlier filing and withdrawing certification application - Board not accepting employer's position that it should exercise its discretion under section 105(10)(i) of the *Act* not to consider the union's current certification application - Employer operating various commercial 'units' or entities in Ontario under single corporate umbrella - Employer operating at only one location in City of Barrie - Union seeking to represent bargaining described as all employees of employer in municipality - Employer proposing unit described as all employees in service division of named 'unit' - Board finding union's proposed bargaining unit appropriate - Certificate issuing

GENERAL SIGNAL LIMITED; IBEW, LOCAL 353 .....(Mar.) 242



Bargaining Unit - Certification - Union making separate certification applications in respect of cleaning contractor's employees employed at separate locations - Union proposing site specific bargaining unit - Employer seeking single unit including employees in Metropolitan Toronto and in Region of Peel or, alternatively, separate municipal units - Board finding union's proposed site specific units appropriate	
SAN-WAL JANITORIAL LTD.; RE UFCW, LOCAL 175 .....	(Apr.) 476
Bargaining Unit - Certification - Union seeking to represent employees of gas bar at single location in Thunder Bay - Employer operating two gas bar locations in municipality - Employer proposing municipal unit - Board finding union's proposed unit appropriate - Representation vote ordered	
CANADIAN TIRE PETROLEUM; UFCW, LOCAL 175 .....	(Apr.) 360
Bargaining Unit - Combination of Bargaining Units - Employer operating movie theatres across Ontario and North America - Over two month period, union having organized seven "front-of-house" bargaining units located in Brampton, Scarborough, Mississauga, Guelph, Sudbury and Toronto - Board allowing union's application under section 7 of the <i>Act</i> to combine the bargaining units	
CINEPLEX ODEON CORPORATION; RE IATSE .....	(July) 824
Bargaining Unit - Combination of Bargaining Units - Employer's employees in separate bargaining units represented by separate locals of same trade union - Board dismissing application to combine bargaining units	
FPC FLEXIBLE PACKAGING CORPORATION; RE GRAPHIC COMMUNICATIONS INTERNATIONAL UNION, LOCAL N-1 AND GRAPHIC COMMUNICATIONS INTERNATIONAL UNION, LOCAL 500M .....	(July) 844
Bargaining Unit - Combination of Bargaining Units - Hospital Labour Disputes Arbitration Act - Reference - Board finding residential care programme of children's treatment centre to be "hospital" within meaning of Hospital Labour Disputes Arbitration Act, and that whole of treatment centre also a "hospital" within meaning of the Act - Union holding bargaining rights for unit of employees working in group homes in residential care programme and for two units of therapists at treatment centre - Union's application to combine bargaining units allowed	
GEORGE JEFFREY CHILDREN'S TREATMENT CENTRE; SEU, LOCAL 268 (Dec.)	1656
Bargaining Unit - Combination of Bargaining Units - Practice and Procedure - Remedies - Board earlier combining employer's "parts" and "manufacturing" bargaining units - Parties unable to resolve outstanding remedial issues surrounding application - Board directing parties to file further pleadings in order to facilitate hearing	
FMG TIMBERJACK INC.; RE GLASS, MOLDERS, POTTERY, PLASTICS & ALLIED WORKERS INTERNATIONAL UNION .....	(Oct.) 1333
Bargaining Unit - Combination of Bargaining Units - Practice and Procedure - Remedies - Board in earlier decision combining full-time and part-time units and remaining seized to deal with further relief - Union subsequently asking Board to set matter down for hearing with respect to remedial relief - Before listing matter for hearing, Board directing union to provide it and employer with detailed description of orders or remedies requested and detailed statement of all material facts on which it relies in accordance with Rule 12 - Employer directed to reply within seven days and to supply information required by Rule 14	
MARRIOTT CORPORATION (AT CARLETON UNIVERSITY); RE CUPE AND ITS LOCAL 2451 .....	(Aug.) 1016
Bargaining Unit - Combination of Bargaining Units - Practice and Procedure - Union seeking to	

combine “inside” unit and “works” unit of municipal hydro-electric commission - Board inviting employer to call its evidence first as to why application ought not to be granted - Board satisfied that combination order would reduce fragmentation and facilitate viable and stable collective bargaining without causing serious labour relations problems - Board directing that bargaining units be combined	
THE HYDRO-ELECTRIC COMMISSION OF THE CITY OF OTTAWA; RE IBEW, LOCAL 636 .....	(Apr.) 516
Bargaining Unit - Combination of Bargaining Units - Remedies - Board earlier combining newly-certified unit with already-existing bargaining unit, and remaining seized - Board declining to make direction under section 7(5) where parties had not engaged in real negotiations concerning terms and conditions of employment of newly certified employees - Board remaining seized	
OLYMPIA & YORK DEVELOPMENTS LIMITED; RE INDEPENDENT CANADIAN TRANSIT UNION AND ITS LOCAL 6 .....	(May) 583
Bargaining Unit - Combination of Bargaining Units - Remedies - Union seeking to combine newly certified editorial bargaining unit in Simcoe County with existing bargaining unit covering various locations including Metropolitan Toronto - Employer submitting that should Board grant union’s application, Board should direct freeze of terms and conditions of Simcoe employees and Board should not remain seized of further outstanding issues - Board directing that bargaining units be combined and remaining seized to deal with any further remedial relief	
METROLAND PRINTING, PUBLISHING AND DISTRIBUTING LTD.; RE SOUTHERN ONTARIO NEWSPAPER GUILD LOCAL 87, THE NEWSPAPER GUILD (CLC, AFL-CIO) .....	(Feb.) 160
Bargaining Unit - Combination of Bargaining Units - Union applying to combine newly certified movie theatre “front-of-the-house” bargaining units in Toronto and Ottawa - Board not accepting employer’s argument that combination would not reduce fragmentation of bargaining units - Board directing that the bargaining units be combined	
FAMOUS PLAYERS INC.; RE IATSE .....	(Nov.) 1527
Bargaining Unit - Combination of Bargaining Units - Union seeking to combine existing full-time and part-time bargaining units - Possibility that Board’s decision may enhance union’s bargaining power entirely speculative and posing no threat to viable and stable collective bargaining - Board directing that bargaining units be combined	
MARRIOTT CORPORATION (AT CARLETON UNIVERSITY); RE CUPE AND ITS LOCAL 2451 .....	(Feb.) 151
Bargaining Unit - Termination - Union representing employees in separate full-time and part-time bargaining units - In previous round of bargaining, employer and union agreeing to combine the two units together with a third bargaining unit in another municipality upon expiry of collective agreement - Group of employees making timely termination application in respect of full-time and part-time units - Board rejecting union’s submission that employees required to demonstrate appropriate level of support in combined bargaining unit - Board directing representation votes in full-time and part-time bargaining units	
RETAIL, WHOLESALE CANADA, CANADIAN SERVICE SECTOR, DIVISION OF THE U.S.W.A., LOCALS 414, 422, 440, 448, 461, 483, 488, 1000, 1688; RE PRIMROSE G. SHORT .....	(July) 891
Build-Up - Bargaining Unit - Certification - Board rejecting employer’s submission that it apply build-up principle and direct representation vote, rather than automatically certifying union enjoying support of more than 55% of employees in unit - At maximum, build-up would	

consist of five employees to the nine employees in bargaining unit at time of application - Board not finding it appropriate to take into account seasonal fluctuations in work force in applying build-up principle - Certificate issuing

KIDS COME FIRST CHILD CARE CENTRE OF VAUGHAN; RE CUPE ..... (Sept.) 1235

Build-Up - Certification - Board not persuaded that evidence reliably pointing to substantial build-up of work force within time frame anticipated by employer - Board declining employer's request to exercise its discretion to order representation vote when work force had "built-up" to more "representative" number - Certificate issuing

N.S. ENTERPRISES LIMITED; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) ..... (Oct.) 1400

Certification - Adjournment - Bargaining Unit - Practice and Procedure - Reconsideration - Employer operating private medical centre - Board earlier finding nurses' bargaining unit to be appropriate for collective bargaining and determining that ONA to be issued certificate - Employer seeking reconsideration of that decision - CAW subsequently applying for certification in respect of all-employee unit excluding nurses - In CAW application, employer proposing all-employee unit (with no exclusion for nurses) or, alternatively, one excluding medical technologists and technicians as well as nurses - Certain employees supporting employer's alternative position on bargaining unit - Board declining to adjourn CAW application pending reconsideration decision in respect of ONA application - Board finding CAW's proposed bargaining unit appropriate - Certificate issuing - Employer's reconsideration application in respect of CAW application dismissed

GLAZIER MEDICAL CENTRE; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA); RE GROUP OF EMPLOYEES ..... (May) 550

Certification - Bargaining Unit - Bargaining Rights - Pre-Hearing Vote - Applicant union proposing single "all employee" bargaining unit - Incumbent union asserting that separate units of Registered Nurses and Registered Nursing Assistants and of all other employees appropriate - Applicant's proposed unit found to be appropriate - Board directing that ballots cast in pre-hearing vote be counted

SIMCOE TERRACE, 601192 ONTARIO LTD. C.O.B. AS; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) ..... (Feb.) 178

Certification - Bargaining Unit - Board considering two certification applications filed by IATSE - In first application, union seeking to represent "front-of-house" staff in municipal unit - In second application, union proposing site-specific unit - Employer proposing single bargaining unit made up of employees in Greater Toronto Area or, alternatively, two municipal units - Board applying *Famous Players* case and finding union's proposed bargaining units appropriate - Certificates issuing

CINEPLEX ODEON CORPORATION; RE I.A.T.S.E. .... (Jan.) 25

Certification - Bargaining Unit - Board not persuaded that union's "motivation" for organizing employees relevant to issue of bargaining unit description - Board applying *Famous Players* case and finding union's proposed site-specific bargaining unit appropriate - Certificate issuing

CINEPLEX ODEON CORPORATION; RE I.A.T.S.E. .... (Jan.) 30

Certification - Bargaining Unit - Board not persuaded that union's proposed bargaining unit



restricted to teachers of Adult Basic English and English as a Second Language an appropriate bargaining unit

OTTAWA BOARD OF EDUCATION; RE OSSTF..... (Dec.) 1690

Certification - Bargaining Unit - Build-Up - Board rejecting employer's submission that it apply build-up principle and direct representation vote, rather than automatically certifying union enjoying support of more than 55% of employees in unit - At maximum, build-up would consist of five employees to the nine employees in bargaining unit at time of application - Board not finding it appropriate to take into account seasonal fluctuations in work force in applying build-up principle - Certificate issuing

KIDS COME FIRST CHILD CARE CENTRE OF VAUGHAN; RE CUPE..... (Sept.) 1235

Certification - Bargaining Unit - Combination of Bargaining Units - Security Guard - Union seeking to combine newly certified unit of security guards with pre-existing all-employee unit of municipality's employees - Parties requesting that Board first determine whether security guards monitor other employees so as to give rise to conflict of interest if included in those employees' bargaining unit - Board satisfied that monitoring of other employees by guards raising real possibility of conflict of interest if guards included in same bargaining unit - Application remitted back to parties

THE MUNICIPALITY OF METROPOLITAN TORONTO; RE CUPE, LOCAL 79..... (June) 795

Certification - Bargaining Unit - Combination of Bargaining Units - Union already representing certain employees of employer - Union applying for certification in respect of tag-end municipal unit - Employer urging Board to create four separate bargaining units designated by street address and function - Employer submitting that part of employer's organization might be found to be "hospital" within meaning of *Hospital Labour Disputes Arbitration Act (HLDAA)* - Board finding *HLDAA* concern to be speculative and not persuaded that employees covered by *HLDAA* must be included in separate unit - Board observing that more comprehensive unit usually appropriate unless serious labour relations problems demonstrably overwhelm difficulties associated with fragmentation or unless larger unit is idiosyncratic or perverse - Board noting that more comprehensive unit presumptively appropriate, if that is what union has organized and applied for - Union's proposed unit found to be appropriate - Certificate issuing - On agreement of parties, Board directing that newly-certified bargaining unit should be combined with unit already represented by union

THE GOVERNING COUNCIL OF THE SALVATION ARMY IN CANADA AND BERMUDA; RE OPSEU ..... (Jan.) 85

Certification - Bargaining Unit - Combination of Bargaining Units - Union already representing full-time production and non-production employees in separate units with geographic description covering Province of Ontario - Union applying to be certified for single unit of part-time employees covering Province of Ontario - Employer without employees at locations other than North Bay and Sturgeon Falls - Board finding single bargaining unit of part-time employees in North Bay and Sturgeon Falls to be appropriate - Interim certificate issuing - Union applying to combine the units - Board rejecting employer's submission that serious labour relations problem created by shift in bargaining power or possibility that printing operation and newspaper operation would both be shut down in event of strike - Board directing that two full-time units be combined with interim certified part-time unit

THE NORTH BAY NUGGET, A DIVISION OF SOUTHAM INC.; RE NORTH BAY NEWSPAPER GUILD, LOCAL 241, THE NEWSPAPER GUILD (CLC, AFL-CIO) ..... (Aug.) 1137

Certification - Bargaining Unit - Constitutional Law - Charter of Rights and Freedoms - Employee - Membership Evidence - Board determining that section 8(4) of the *Act* not vio-

lating freedoms of expression, association and right to equal treatment set out in *Charter* - Board dismissing employees' objections to validity of trade union's membership evidence - Board finding union's proposed "all employee" unit appropriate and rejecting employer's assertion that the retail and service components of its business so distinct that employees in those components not sharing community of interests - Board finding "hardware department manager" to be "employee" within meaning of the *Act* - Certificate issuing

KEN BODNAR ENTERPRISES INC.; RE USWA; RE GROUP OF EMPLOYEES..... (June) 688

Certification - Bargaining Unit - Employee - Board finding "shift supervisors" to be employees within meaning of the *Act* - Employer and union disputing description of appropriate bargaining unit - Union proposing unit excluding office and sales staff - Employer asserting that excluding office and sales staff would not reflect communities of interest in plant and would lead to serious labour relations problems - Board finding reference to "community of interest" to be unhelpful - Board's focus should be upon evidence of concrete, demonstrable problems which will result from applicant's proposed unit - Board finding union's proposed unit appropriate

ACTIVE MOLD PLASTIC PRODUCTS LTD.; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA ..... (June) 617

Certification - Bargaining Unit - Employee - Deputy Treasurer and Works Supervisor employed by municipality found to be 'employees' within meaning of *Act* and included in bargaining unit - Certificate issuing

CORPORATION OF THE TOWN OF BOTHWELL; RE TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, LOCAL NO. 880..... (Mar.) 237

Certification - Bargaining Unit - Employee - Employee Reference - Practice and Procedure - Union applying for certification and both union and employer participating in waiver process - Union making no challenges to list of employees filed by employer and Officer subsequently announcing the count - Employee list not including four Regional Managers - Union and employer subsequently agreeing on bargaining unit description, but union advising Board that parties disputing whether Regional Managers should be included in bargaining unit - Union asking Board to appoint officer under section 108(2) of the *Act* - Employer objecting to request under section 108(2) as untimely, prejudicial and an abuse of waiver and certification procedure - Board holding that union and employer bound by agreements made in waiver process, including agreements on list of employees in bargaining unit and on geographic scope of bargaining unit - Certificate issuing - Request under section 108(2) not considered by panel in context of certification application

CAA NORTHEASTERN ONTARIO AUTO CLUB AND ONTARIO MOTOR LEAGUE WORLDWIDE TRAVEL (SUDBURY) INC.; USWA..... (Mar.) 208

Certification - Bargaining Unit - Employee - Practice and Procedure - Representation Vote - Parties disputing status of certain individuals - Board rejecting union's submission that doctrines of *res judicata* or issue estoppel applying to prevent employer from taking position different from position taken in union's earlier certification application - Board rejecting employer's submission that in circumstances of the case, including its assertion that union's support barely over 55%, representation vote should be ordered - Board revoking appointment of Labour Relations Officer and directing hearing before panel of Board in order to expedite resolution of bargaining unit configuration issues

REYNOLDS-LEMMERZ INDUSTRIES; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA); RE GROUP OF EMPLOYEES..... (Sept.) 1242

- Certification - Bargaining Unit - Employee - Security Guards - Board determining that "site supervisors" employed by security firm not exercising managerial functions within meaning of section 1(3) of the *Act* - "Site supervisors" included in bargaining unit - Final certificate issuing
- WACKENHUT OF CANADA LIMITED; RE USWA .....(Jan.) 91
- Certification - Bargaining Unit - Employer agricultural co-operative owned by 300 apple and tomato farmers - Co-op operating plant involved in squeezing and canning apple and tomato juice - Employer submitting that its employees employed in agriculture and that *Labour Relations Act* not applying - Board finding that cannery employees not employed in agriculture - Employer seeking to exclude seasonal workers from union's proposed all-employee bargaining unit where application not brought 'in season' - Board finding union's proposed all-employee unit appropriate - Certificate issuing
- MAR-BRITE FOODS CO-OPERATIVE INC.; RE UFCW, AFL-CIO-CLC.....(Mar.) 270
- Certification - Bargaining Unit - Employer and union disputing whether bargaining unit had been agreed to in waiver process - Employer proposing bargaining unit excluding part-time employees and students - Board not conclusively determining whether bargaining unit had been agreed to, having concluded that union's proposed unit appropriate - Board further finding that employer's position on bargaining unit untenable given language of section 6(2.1) of the *Act* - Certificate issuing
- GUELPH REST HOME INCORPORATED C.O.B. AS HERITAGE HOUSE RETIREMENT HOME; RE SEIU, LOCAL 532 AFFILIATED WITH THE A.F. OF L., C.I.O., C.L.C..... (May) 556
- Certification - Bargaining Unit - Employer engaged in manufacture and sale of roof trusses and operating plant in Township of Strong and yard in Town of Sunridge - Union applying to represent employees at plant only - Employer submitting that unit should include both plant and yard employees - Board finding union's proposed unit appropriate - Certificate issuing
- KENT TRUSSES LIMITED; RE IWA - CANADA.....(Nov.) 1541
- Certification - Bargaining Unit - Judicial Review - Practice and Procedure - Stay - Following participation in certification waiver programme and after agreeing on a number of issues related to union's certification application (including bargaining unit description), parties apparently agreeing to waive hearing - Legal identity of employer only issue apparently outstanding - Employer subsequently retaining new counsel, seeking to file additional materials and advising Board of its intention to attend officer meeting and Board hearing - Employer asking Board to find appropriate bargaining unit to be one other than that which had earlier been agreed to by the parties - Employer relying on fact that Waiver of Hearing Form A-5 not submitted for proposition that it had not agreed to waive hearing - Board not permitting employer to resile from agreement on bargaining unit - Board finding agreed-upon unit appropriate - Board indicating that it will consider employer request, if made, for hearing on question of legal identity of employer - Employer applying for judicial review on ground that Board declined jurisdiction to determine appropriate bargaining unit - Employer applying for stay pending judicial review - Stay application dismissed by Divisional Court
- GLAZIER MEDICAL CENTRE; RE ONA AND THE OLRB .....(June) 802
- Certification - Bargaining Unit - Membership Evidence - Employer operating restaurant in downtown Ottawa - Union seeking municipality-wide bargaining unit - Employer proposing site-specific unit - Board finding union's proposed unit appropriate - Union submitting card bearing no indication as to date on which it was signed - Board hearing evidence with



respect to circumstances of signature on membership evidence and satisfying itself that card signed within six month period proceeding application date - Certificate issuing

MARCHELINO RESTAURANTS, MARCHELINO RESTAURANTS LTD. C.O.B. AS; RE USWA..... (Sept.) 1240

Certification - Bargaining Unit - ONA applying for unit of nurses employed as Case Managers - Employer proposing unit of Case Managers irrespective of their professional qualifications - Board finding unit of all Case Managers appropriate - Certificate issuing

HAMILTON PROGRAM FOR SCHIZOPHRENIA INC.; ONA .....(Mar.) 252

Certification - Bargaining Unit - OPSEU applying to displace incumbent employees' association - OPSEU asking to be certified in respect of single bargaining unit including full-time and part-time employees - Board finding that incumbent union holding bargaining rights in respect of separate bargaining units for full-time and part-time employees - Board finding that OPSEU's proposed bargaining unit appropriate - Board also finding that ballots of probationary employees cast in pre-hearing representation vote ought to be counted

THE CANADIAN RED CROSS SOCIETY; OPSEU; RE CANADIAN RED CROSS BLOOD TRANSFUSION SERVICE EMPLOYEES ASSOCIATION .....(Dec.) 1694

Certification - Bargaining Unit - Petition - Employer operating separate 'electrical' and 'bottle cap' divisions out of separate buildings with separate street addresses on one site - Union applying for certification and proposing bargaining unit including employees of both divisions - Employer taking position that separate units appropriate - Board not satisfied that more comprehensive unit would cause serious labour relations problems - Union's proposed unit found appropriate - Board not satisfied that petition reflecting voluntary wishes of the employees who signed them - Certificate issuing

INSULEC LTD. RE COMMUNICATIONS ENERGY, AND PAPERWORKERS UNION OF CANADA; RE GROUP OF OBJECTING EMPLOYEES .....(Mar.) 254

Certification - Bargaining Unit - Practice and Procedure - Following participation in certification waiver programme and after agreeing on a number of issues related to union's certification application (including bargaining unit description), parties apparently agreeing to waive hearing - Legal identity of employer only issue apparently outstanding - Employer subsequently retaining new counsel, seeking to file additional materials and advising Board of its intention to attend officer meeting and Board hearing - Employer asking Board to find appropriate bargaining unit to be one other than that which had earlier been agreed to by the parties - Employer relying on fact that Waiver of Hearing Form A-5 not submitted for proposition that it had not agreed to waive hearing - Board not permitting employer to resile from agreement on bargaining unit - Board finding agreed-upon unit appropriate - Board indicating that it will consider employer request, if made, for hearing on question of legal identity of employer

GLAZIER MEDICAL CENTRE; ONA.....(Mar.) 249

Certification - Bargaining Unit - Security Guard - Union applying to represent employees of security company - Union proposing that bargaining unit encompass all employees and employer proposing that unit be confined to security guards - Union asserting that unit should be limited to Regional Municipality of Sudbury and employer asserting that unit should encompass entire District of Sudbury - Board reviewing principles to be applied in determining bargaining unit appropriateness - Board observing that all employees share "community of interest" by virtue of working for same employer and that "real life collective bargaining" able to accommodate groups with very different duties and conditions - Union's proposed bargaining unit found to be appropriate - Certificate issuing

BURNS INTERNATIONAL SECURITY SERVICES LIMITED; RE USWA; RE GROUP OF EMPLOYEES .....(Apr.) 347

- Certification - Bargaining Unit - Security Guards - Union applying to represent employer's security guards - Union already representing employees of employer in one of ten existing bargaining units - Board rejecting employer's argument that bargaining unit of security guards inappropriate if represented by any of various bargaining agents already representing other company employees, but particularly the applicant - Certificate issuing
- B A BANKNOTE A DIVISION OF QUEBECOR PRINTING INC.; RE IAM .....(Nov.) 1484
- Certification - Bargaining Unit - Union applying to represent employees of respondent hotel and proposing bargaining unit excluding front desk staff - Employer proposing that front desk staff be included in unit on basis of its assertion that front desk employees spend 25 per cent of their time performing work ordinarily performed by members of union's proposed bargaining unit - Board finding union's proposed unit appropriate - Certificate issuing
- JOURNEY'S END, 772427 - O/L. CDA. INC. O/A C.O.B. QUALITY SUITES BY; RE TEXTILE PROCESSORS, SERVICE TRADES, HEALTH CARE, PROFESSIONAL AND TECHNICAL EMPLOYEES INTERNATIONAL UNION, LOCAL 351 .....(Nov.) 1538
- Certification - Bargaining Unit - Union applying to represent unit of meat department employees in grocery store - Employer submitting that 'craft' unit not appropriate because employees no longer exercising technical skills distinguishing them from other employees within meaning of section 6(3) of the *Act* - Board finding union's proposed unit appropriate - Certificate issuing
- LONGO BROTHERS FRUIT MARKETS INC.; RE UFCW, LOCAL 633.....(Mar.) 266
- Certification - Bargaining Unit - Union earlier filing and withdrawing certification application - Board not accepting employer's position that it should exercise its discretion under section 105(10)(i) of the *Act* not to consider the union's current certification application - Employer operating various commercial 'units' or entities in Ontario under single corporate umbrella - Employer operating at only one location in City of Barrie - Union seeking to represent bargaining described as all employees of employer in municipality - Employer proposing unit described as all employees in service division of named 'unit' - Board finding union's proposed bargaining unit appropriate - Certificate issuing
- GENERAL SIGNAL LIMITED; IBEW, LOCAL 353 .....(Mar.) 242
- Certification - Bargaining Unit - Union making separate certification applications in respect of cleaning contractor's employees employed at separate locations - Union proposing site specific bargaining unit - Employer seeking single unit including employees in Metropolitan Toronto and in Region of Peel or, alternatively, separate municipal units - Board finding union's proposed site specific units appropriate
- SAN-WAL JANITORIAL LTD.; RE UFCW, LOCAL 175 .....(Apr.) 476
- Certification - Bargaining Unit - Union seeking to represent employees of gas bar at single location in Thunder Bay - Employer operating two gas bar locations in municipality - Employer proposing municipal unit - Board finding union's proposed unit appropriate - Representation vote ordered
- CANADIAN TIRE PETROLEUM; UFCW, LOCAL 175 .....(Apr.) 360
- Certification - Build-Up - Board not persuaded that evidence reliably pointing to substantial build-up of work force within time frame anticipated by employer - Board declining employer's request to exercise its discretion to order representation vote when work force had "built-up" to more "representative" number - Certificate issuing
- N.S. ENTERPRISES LIMITED; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) .....(Oct.) 1400

- Certification - Certification Where Act Contravened - Construction Industry - Interference in Trade Unions - Board finding lay-off of nine employees tainted by anti-union animus - Union certified under section 9.2 of the Act
- DOMUS INDUSTRIES LTD.; RE PAT, LOCAL UNION 1891 ..... (Dec.) 1630
- Certification - Certification Where Act Contravened - Change in Working Conditions - Discharge - Discharge for Union Activity - Interference in Trade Unions - Unfair Labour Practice - Board finding that company did not violate Act in discharging union supporter or three managers, and that a number of other allegations not established - Employer violating Act in telling employee that he could not solicit for union on company property, promising to clear discipline records, removing last names from work schedules and time cards and offering Christmas bonus to employees as inducement to avoid dealing with union and thus interfering with union's organizing drive - Board inviting submissions on whether it ought to determine application under "old" section 8 of the Act before hearing adjourned unfair labour practice complaint - Board remaining seized as to all remedial matters
- PRICE CLUB WESTMINSTER; PRICE CLUB ST. LAURENT INC. C.O.B. AS; RE UFCW, LOCAL 175 ..... (Aug.) 1029
- Certification - Certification Where Act Contravened - Construction Industry - Discharge - Discharge for Union Activity - Interference in Trade Unions - Intimidation and Coercion - Remedies - Unfair Labour Practice - Employer violating Act in threatening and intimidating one employee with respect to union membership and in laying off second employee because of his union activity - Reinstatement with compensation ordered - Board determining that as result of employer's violations true wishes of employees unlikely to be ascertained - Union certified under section 9.2 of the Act
- BASILE INTERIORS LTD.; RE PAT, LOCAL 1494 ..... (Aug.) 963
- Certification - Certification Where Act Contravened - Interference with Trade Unions - Intimidation and Coercion - Remedies - Unfair Labour Practice - Employer found to have violated Act by certain statements contained in bulletins distributed to employees, certain statements made by employer at meeting with employees, and by certain statements made to two employees about soliciting support for the union - Board directing employer to post and distribute Board notice to employees, to permit union access to plant during working hours for purpose of convening meeting with employees out of presence of members of management, and to rescind written warnings given to two employees - Board declining to certify union under section 9.2 of the Act - Representation vote directed
- CANAC KITCHENS LIMITED; RE CJA ..... (Aug.) 972
- Certification - Change in Working Conditions - Natural Justice - Practice and Procedure - Sale of a Business - Unfair Labour Practice - Union alleging that employer violating statutory freeze - Employer acknowledging its status as "successor employer" by virtue of section 64.2 of the *Act*, but arguing that Board ought to dismiss complaint due to union's 3 1/2 month delay in bringing complaint - Employer also submitting that statutory freeze not applying to it because it never received notice of union's certification application - Board declining to dismiss for delay and finding that statutory freeze applying to successor employer under section 64(3) of the *Act* - Employer's preliminary motions dismissed
- GROUP 4 C.P.S. LIMITED; RE USWA ..... (Apr.) 400
- Certification - Charges - Employee - Employer Support - Evidence - Membership Evidence - Board determining that employee who initiated union organizing campaign not managerial nor employed in position confidential to labour relations and that section 13 of the Act having no application - Evidence not indicating that membership evidence unreliable as indica-



tor that more than 55% of employees in bargaining unit had applied to be union members at date of application - Certificate issuing

BANNERMAN ENTERPRISES INC.; RE USWA; RE GROUP OF EMPLOYEES.....(Nov.)

1489

Certification - Charges - Evidence - Fraud - Intimidation and Coercion - Membership Evidence - Petition - Practice and Procedure - Timeliness - Union's certification application sent by registered mail on August 11 and employees' petition received by private courier at Board's office on August 12 - Rules of Procedure providing that date of filing is date document received by Board or, if mailed by registered mail, date on which it is mailed as verified by Post Office - Combined operation of section 8(4) of the Act and Board's Rules making petition untimely - Board dismissing objecting employees' allegations concerning union's collection of membership evidence for failure to make out *prima facie* case - Board declining objecting employees' request that Board exercise its discretion under section 8(3) of the Act to order representation - Certificate issuing

LUTHERAN NURSING HOME (OWEN SOUND); RE CLC; RE ROSANNE GILLARD AND SANDRA MARSHALL ..... (Oct.)

1362

Certification - Charges - Evidence - Intimidation and Coercion - Membership Evidence - Practice and Procedure - Board declining to receive into evidence certain allegations which did not comply with Rules 14 and 16 of Board's Rules of Procedure - Board declining to receive other proffered evidence offending collateral evidence rule - Board not satisfied that allegations that union organizers had attempted to obtain membership evidence through coercion substantiated - Certificate issuing - Employer's reconsideration application dismissed

ROYALGUARD VINYL CO., A DIVISION OF ROYPLAST LIMITED; RE SAMUEL OFOSU ANSAH; RE USWA.....(Aug.)

1057

Certification - Charges - Intimidation and Coercion - Fraud - Membership Evidence - Reconsideration - Unfair Labour Practice - Following union's certification, certain employees making unfair labour practice application complaining about manner in which fellow employee collected membership evidence - Employer also seeking reconsideration of certification decision - Board hearing evidence of nine persons and resolving conflicting evidence in favour of union's witness - Board finding that employee collector did not contravene *Act* when he approached employees to obtain membership evidence - Employee collector's actions not causing Board to conclude that filed membership evidence unreliable - Applications dismissed

MADAWASKA HARDWOOD FLOORING INC.; RE IWA - CANADA.....(Mar.)

267

Certification - Charges - Intimidation and Coercion - Membership Evidence - Board finding no substance to allegations that union's conduct created "profound fear" among employees as to whether they should join union - Evidence not supporting conclusion that union collected membership evidence through intimidation or material misrepresentation - Certificate issuing

DUALEX ENTERPRISES INC., A DIVISION OF DEPCO INTERNATIONAL INCORPORATED; RE CAW-CANADA; RE GROUP OF EMPLOYEES.....(Dec.)

1641

Certification - Charges - Intimidation and Coercion - Membership Evidence - Board persuaded that allegations made not causing Board to doubt validity of membership evidence signed - Interim certificate issuing

MY COUSIN'S RESTAURANT), FJS HOLDINGS (C.O.B. AS; RE HOSPITALITY & SERVICE TRADES UNION LOCAL 261 .....(Nov.)

1572

Certification - Charges - Intimidation and Coercion - Membership Evidence - Employees alleging that they had been intimidated and coerced by union organizers into signing membership

evidence - Board outlining its approach when considering charges of improper conduct in collection of membership evidence - Board finding no reason in this case to doubt validity of cards submitted on behalf of employees - Certificate issuing

DAVIS DISTRIBUTING LIMITED; RE TEAMSTERS LOCAL UNION NO. 419; RE CHANDRABALLI MUSSAI AND MICHELLE MCCREADY, GROUP OF EMPLOYEES ..... (Sept.) 1190

Certification - Charges - Intimidation and Coercion - Petition - Membership Evidence - UFCW applying to represent bargaining unit of grocery store's meat department employees - Board according no weight to timely petition making reference to RWDSU and signed by employees before UFCW membership evidence collected - Board dismissing employer's allegations that membership evidence collected through intimidation and coercion - Certificate issuing

R.J. CHARTRAND HOLDINGS LIMITED C.O.B. AS CHARTRAND'S YOUR INDEPENDENT GROCER; RE UFCW, LOCAL 633; RE GROUP OF EMPLOYEES ..... (Oct.) 1407

Certification - Charges - Membership Evidence - Certain employees alleging improprieties in collection of membership evidence by union - Board satisfied that allegations not impugning or casting doubt on membership evidence - Board rejecting evidence by employee to effect that she did not know that she was signing application for union membership when signing union card - Certificate issuing

ROY AYRANTO SALES LIMITED; RE USWA; RE GROUP OF EMPLOYEES ..... (Mar.) 285

Certification - Charges - Representation Vote - Signing of "Consent and Waiver" form precluding employer from relying on alleged union improprieties which it was aware of on date of vote in order to set aside representation vote - Board, in any event, determining that employer's allegations even if true would not lead to dismissal of certification application or ordering of new vote, as requested by employer - Certificate issuing

THE CANADIAN RED CROSS SOCIETY (ONTARIO DIVISION); RE SEU, LOCAL 210 ..... (Nov.) 1592

Certification - Collective Agreement - Pre-Hearing Vote - Timeliness - Trade Union Status - Staff Association wishing to displace CUPE as bargaining agent for employees of Board of Education - Staff Association found to be trade union within meaning of *Labour Relations Act* - Board concluding that extension of collective agreement to March 31, 1996 pursuant to section 35 of *Social Contract Act* making staff association's certification application untimely

OTTAWA BOARD OF EDUCATION; RE CUPE AND ITS LOCAL 1400; RE EDUCATION SUPPORT STAFF ASSOCIATION ..... (Aug.) 1024

Certification - Constitutional Law - Reconsideration - Employer operating flour mill and seeking reconsideration of 1991 decision certifying trade union - Employer asserting that its operations involve federal work and that Board without constitutional jurisdiction to deal with 1991 certification decision - Board noting that bargaining rights granted by certificate since subsumed by collective agreement entered into by union and employer - Decision on constitutional propriety of certificate issued in 1991 would not resolve constitutional issue which would continue to exist between the parties - Board declining to entertain reconsideration request

MCCARTHY MILLING LIMITED; RE UFCW, LOCAL 175; RE ADM-AGRI INDUSTRIES LIMITED ..... (May) 577

Certification - Construction Industry - Membership Evidence - Reconsideration - Settlement - Union certified after entering into minutes of settlement with employer regarding descrip-

- tion of bargaining unit and list of employees at work on application date - Employer seeking reconsideration of certification decision and relying on various grounds, including assertion that it had not received legal advice prior to signing settlement document, that it included specimen signatures for only 4 of 5 employees on the list and that it did so only after the terminal date - Employer also alleging non-sign - Board finding no basis for doubting reliability of membership evidence filed or for reconsidering its decision on any other basis - Reconsideration application dismissed
- MARLI MECHANICAL LTD.; RE UA, LOCAL UNION 46 ..... (June) 725
- Certification - Construction Industry - Reconsideration - Board certifying union in ICI and non-ICI bargaining units - Employer applying for reconsideration two weeks later on various grounds including its assertion that it had received an incomplete package of materials from the Board in connection with the union's application and that it had been misled as to its obligations by comments from a clerk at the Board - Application dismissed
- JAMES JOHNSTON MECHANICAL CONTRACTING LTD.; RE LOCAL UNION 47 SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION ..... (Dec.) 1671
- Certification - Construction Industry - Representation Vote - Employee filing objection and asking Board to conduct new representation vote on ground that he made mistake in marking ballot - Employee alleging that instructions on ballot confusing - Board concluding that any confusion on employee's part not attributable to form of ballot or instructions given to voters - Certificates issuing
- WINDSOR ELEVATOR SERVICE INC.; RE INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS, LOCAL NO. 90; RE CONSTRUCTION WORKERS, LOCAL 53, CLAC ..... (Mar.) 334
- Certification - *Crown Employees Collective Bargaining Act* - Termination - Rival union seeking to terminate incumbent union's bargaining rights for certain "enforcement officers" employed by Crown agency covered by *Crown Employees Collective Bargaining Act, 1993* (Bill 117) and/or applying to be certified to represent those employees - Parties disputing effect of transition provisions in Bill 117 - Board concluding that Labour Relations Board (and not Ontario Public Service Labour Relations Tribunal) having jurisdiction to determine the applications and that provisions of "old" *Crown Employees Collective Bargaining Act* applying to the applications
- TORONTO AREA TRANSIT OPERATING AUTHORITY; RE ASSOCIATION OF GO TRANSIT ENFORCEMENT OFFICERS; RE AMALGAMATED TRANSIT UNION, LOCAL 1587 ..... (July) 943
- Certification - Employee - Board concluding that Inspectors and Instructors employed by Toronto Transit Commission exercising managerial functions - Inspectors and Instructors not "employees" within meaning of the *Act*
- TORONTO TRANSIT COMMISSION; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA); RE AMALGAMATED TRANSIT UNION, LOCAL 113; RE GROUP OF EMPLOYEES ..... (Mar.) 319
- Certification - Employee - Board finding that certain persons attending safety orientation session on date of certification application not employees at work on that date and properly excluded from list of employees
- MAIDSTONE MANUFACTURING INC.; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) ..... (Aug.) 1011
- Certification - Employee - Employee Reference - Board finding secretary/clericals, payroll



administrator, municipal law enforcement inspector, property standards officer, and principal planner employed by municipality to be “employees” within meaning of the *Act* - Records management co-ordinator found not to be an “employee”

THE CORPORATION OF THE TOWN OF INNISFIL; RE COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA ..... (Jan.) 76

Certification - Employee - Employee Reference - Practice and Procedure - Parties disputing employee status of Discharge Planning Co-Ordinator - Board in receipt of Labour Relations Officer Report including transcript of examination, plus parties’ full written submissions - Board satisfied that matter can be decided on basis of material before it and without further oral hearing

NIAGARA-ON-THE-LAKE GENERAL HOSPITAL; RE ONA ..... (July) 884

Certification - Employee - Occupational Health Nurse found to be “employee” within meaning of the *Act* and included in nurses’ bargaining unit - Board finding that responsibility for completing certain workers’ compensation forms not a managerial function as contemplated by section 1(3) of the *Act*

PUBLIC GENERAL HOSPITAL SOCIETY OF CHATHAM; RE ONA ..... (Feb.) 174

Certification - Employee - Union and employer disputing whether certain individuals should be excluded from bargaining unit because they exercise managerial functions or are employed in confidential capacity - Board finding Activity Director and Registered Nurses employed by nursing home to be “employees” within meaning of the *Act* - Final certificate issuing

FOYER SANSFIELD NURSING HOME, 681356 ONTARIO LIMITED C.O.B. AS; RE USWA ..... (Apr.) 393

Certification - Employer Support - Trade Union - Trade Union Status - Unfair Labour Practice - Board declining to bar certification application by employees’ association under section 105 of the *Act* following unsuccessful application to terminate union’s bargaining rights - Employees’ association found to be a trade union under the *Act* where applications for membership not completed until several weeks after other steps in forming union - Board not persuaded that employer participated in formation or administration of association - Board directing that ballots cast in pre-hearing representation vote be counted

EUCLID-HITACHI HEAVY EQUIPMENT LTD.; RE EUCLID-HITACHI EMPLOYEES ASSOCIATION; RE CAW-CANADA AND ITS LOCAL 1917 ..... (Nov.) 1514

Certification - Evidence - Membership Evidence - Form A-4 declarant disclosing that ten membership cards received by mail and that no additional steps taken to verify membership evidence - Board not prepared to give full evidentiary weight to mailed membership cards where declarant’s only basis for asserting that cards signed by persons indicated on them is declarant’s knowledge that cards received at union office in sealed business reply envelopes on specified dates, that the envelopes were delivered to desk of receiver on those dates, and that receiver opened the envelopes personally and signed cards on those dates - Board directing taking of representation vote

SEEBURN DIVISION OF VENTRA GROUP INC.; RE USWA ..... (Nov.) 1585

Certification - Evidence - Petition - Practice and Procedure - Termination - Board ruling that employee who had been discharged contrary to the *Act*, prior to application to terminate union’s bargaining rights, should be included on list of employees for purposes of the count - Board not giving any weight to petition sent to Board by fax - Applicant conceding that re-affirmation evidence filed by union representing voluntary expression of employee wishes - Application dismissed

MEAFORD BEAVER VALLEY COMMUNITY SUPPORT SERVICES; RE SONYA TER STEGE; RE OPSEU ..... (Oct.) 1375

Certification - Interim Relief - Practice and Procedure - Reconsideration - Stay - Employer applying for reconsideration of "bottom line" decision to certify union and seeking interim order staying Board's decision pending issuance of reasons for decision - Board explaining importance of avoiding delay in labour relations and practice of issuing "bottom line" decisions with reasons to follow - Balance of harm weighing against staying Board's decision - Application dismissed

ROYALGUARD VINYL CO., A DIVISION OF ROYPLAST LIMITED; RE USWA..... (June)

775

Certification - Practice and Procedure - Representation Vote - Union objecting to results of representation vote on grounds that certain individual ("A") ought not to have voted and that certain other individual ("B") was not on voters list, but ought to have been - Union and employer making full written representations in respect of objections - Union seeking oral hearing - Board satisfied that oral hearing unnecessary to determine objections raised by union - Board concluding that, having agreed to count A's ballot at the time of the vote, union ought not to be permitted to resile from its agreement and challenge A's status after ballots were counted - Board similarly concluding that having agreed to composition of voters' list, and having certified that all eligible voters had had opportunity to vote, union ought not to be permitted to assert that B was eligible voter - Board declining to order second representation vote - Certification application dismissed

HIGHLAND PACKERS LIMITED; UFCW, AFL, CIO, CLC ..... (Apr.)

434

Certification - Pre-Hearing Vote - Timeliness - Certification application made by raiding union timely when filed - Incumbent union submitting that notice given by it under section 35 of the *Social Contract Act* having effect of closing open period retroactively - Board finding no basis for interpretation offered by incumbent union - Board directing that ballots cast in representation vote be counted

THE CORPORATION OF THE CITY OF SCARBOROUGH; CUPE; RE ONA.. (Mar.)

300

Certification - Pre-Hearing Vote - Union applying for certification and requesting pre-hearing vote - Employer submitting that Board without jurisdiction to direct vote and requesting hearing to deal with issue prior to vote being held - Board declining employer's request, directing that pre-hearing vote be taken, and that ballot box be sealed pending disposition of issues in dispute

KNOB HILL FARMS LIMITED; RE TEAMSTERS LOCAL UNION 938; RE GROUP OF EMPLOYEES..... (May)

559

Certification - Trade Union - Board dismissing earlier certification application on ground that employer's employees not eligible for membership under applicant's constitution - Union making subsequent application - Board finding that amendments to applicant's constitution effective to cure defect regarding restriction on membership

THE MUNICIPALITY OF METROPOLITAN TORONTO; RE ONTARIO LIQUOR BOARDS EMPLOYEES' UNION; RE METROPOLITAN TORONTO CIVIC EMPLOYEES' UNION, LOCAL 43, CUPE, LOCAL 79..... (Nov.)

1594

Certification - Trade Union - Liquor Boards Employee's Union applying for certification in respect of certain municipal employees - Union's constitution restricting membership to employees of the Crown, its agencies or any private employer - Board concluding that municipal employees not eligible for membership under applicant union's constitution -

Union not having established practice of admitting persons to membership without regard to constitution's eligibility requirements - Application dismissed

THE MUNICIPALITY OF METROPOLITAN TORONTO, METROPOLITAN TORONTO CIVIC EMPLOYEES' UNION, LOCAL 43, AND CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 79; RE ONTARIO LIQUOR BOARDS EMPLOYEES' UNION ..... (July) 938

Certification Where Act Contravened - Certification - Construction Industry - Interference in Trade Unions - Board finding lay-off of nine employees tainted by anti-union animus - Union certified under section 9.2 of the Act

DOMUS INDUSTRIES LTD.; RE PAT, LOCAL UNION 1891 ..... (Dec.) 1630

Certification Where Act Contravened - Certification - Change in Working Conditions - Discharge - Discharge for Union Activity - Interference in Trade Unions - Unfair Labour Practice - Board finding that company did not violate Act in discharging union supporter or three managers, and that a number of other allegations not established - Employer violating Act in telling employee that he could not solicit for union on company property, promising to clear discipline records, removing last names from work schedules and time cards and offering Christmas bonus to employees as inducement to avoid dealing with union and thus interfering with union's organizing drive - Board inviting submissions on whether it ought to determine application under "old" section 8 of the Act before hearing adjourned unfair labour practice complaint - Board remaining seized as to all remedial matters

PRICE CLUB WESTMINSTER; PRICE CLUB ST. LAURENT INC. C.O.B. AS; RE UFCW, LOCAL 175 ..... (Aug.) 1029

Certification Where Act Contravened - Certification - Construction Industry - Discharge - Discharge for Union Activity - Interference in Trade Unions - Intimidation and Coercion - Remedies - Unfair Labour Practice - Employer violating Act in threatening and intimidating one employee with respect to union membership and in laying off second employee because of his union activity - Reinstatement with compensation ordered - Board determining that as result of employer's violations true wishes of employees unlikely to be ascertained - Union certified under section 9.2 of the Act

BASILE INTERIORS LTD.; RE PAT, LOCAL 1494 ..... (Aug.) 963

Certification Where Act Contravened - Certification - Interference with Trade Unions - Intimidation and Coercion - Remedies - Unfair Labour Practice - Employer found to have violated Act by certain statements contained in bulletins distributed to employees, certain statements made by employer at meeting with employees, and by certain statements made to two employees about soliciting support for the union - Board directing employer to post and distribute Board notice to employees, to permit union access to plant during working hours for purpose of convening meeting with employees out of presence of members of management, and to rescind written warnings given to two employees - Board declining to certify union under section 9.2 of the Act - Representation vote directed

CANAC KITCHENS LIMITED; RE CJA ..... (Aug.) 972

Change in Working Condition - *Hospital Labour Disputes Arbitration Act* - Unfair Labour Practice - ONA alleging that hospital employer violating statutory freeze by granting non-bargaining unit staff one extra week of vacation entitlement and refusing to extend that benefit to ONA bargaining unit members still without first collective agreement - Board applying "reasonable expectations" test - Application allowed - Employer directed to grant bargaining unit employees same compensation package granted to non-bargaining unit employees

THE BOARD OF GOVERNORS OF THE BELLEVILLE GENERAL HOSPITAL; RE ONA ..... (July) 904



Change in Working Conditions - Certification - Certification Where Act Contravened - Discharge - Discharge for Union Activity - Interference in Trade Unions - Unfair Labour Practice - Board finding that company did not violate Act in discharging union supporter or three managers, and that a number of other allegations not established - Employer violating Act in telling employee that he could not solicit for union on company property, promising to clear discipline records, removing last names from work schedules and time cards and offering Christmas bonus to employees as inducement to avoid dealing with union and thus interfering with union's organizing drive - Board inviting submissions on whether it ought to determine application under "old" section 8 of the Act before hearing adjourned unfair labour practice complaint - Board remaining seized as to all remedial matters

PRICE CLUB WESTMINSTER; PRICE CLUB ST. LAURENT INC. C.O.B. AS; RE UFCW, LOCAL 175 .....(Aug.)

1029

Change in Working Conditions - Certification - Natural Justice - Practice and Procedure - Sale of a Business - Unfair Labour Practice - Union alleging that employer violating statutory freeze - Employer acknowledging its status as "successor employer" by virtue of section 64.2 of the *Act*, but arguing that Board ought to dismiss complaint due to union's 3 1/2 month delay in bringing complaint - Employer also submitting that statutory freeze not applying to it because it never received notice of union's certification application - Board declining to dismiss for delay and finding that statutory freeze applying to successor employer under section 64(3) of the *Act* - Employer's preliminary motions dismissed

GROUP 4 C.P.S. LIMITED; RE USWA .....(Apr.)

400

Change in Working Conditions - Crown Employees Collective Bargaining Act - Interim Relief - Remedies - Unfair Labour Practice - Union alleging that employers violating statutory freeze by altering employees' pension plan and seeking interim relief pending disposition of complaint - Employers submitting that Board should not grant interim relief which is tantamount to final disposition of main complaint - Board not agreeing that interim relief never appropriate in such circumstances - Board satisfied that balance of harm favouring union and that interim relief should be granted - Board directing employers to provide bargaining unit employees with pension plan equivalent to Public Service Pension Plan pending disposition of unfair labour practice complaint

BEEF IMPROVEMENT ONTARIO INCORPORATED, THE CROWN IN RIGHT OF ONTARIO (AS REPRESENTED BY THE ONTARIO MINISTRY OF AGRICULTURE AND FOOD) AND ONTARIO SWINE IMPROVEMENT ONTARIO INCORPORATED AND; RE OPSEU; RE GROUP OF EMPLOYEES.....(Apr.)

341

Change in Working Conditions - Discharge - Discharge for Union Activity - *Hospital Labour Disputes Arbitration Act*- Interim Relief - Remedies - Settlement - Unfair Labour Practice - Union certified three years earlier and still without first collective agreement - Union making unfair labour practice complaint in respect of work reorganization ("alternative placement") and lay-offs affecting one-half of the bargaining unit - Union alleging that employer's conduct motivated by anti-union *animus*, breaching statutory freeze and violating minutes of settlement of earlier complaint - Union seeking interim order preserving *status quo* pending disposition of unfair labour practice complaint or until interest arbitration award issued - Employer implementing impugned changes after notice of union's interim relief application, but before Board hearing - Board concluding that balance of harm weighing in favour making interim order - Employer directed to restore and maintain *status quo* with respect to bargaining unit jobs pending disposition of union's complaint

THE MISSISSAUGA HOSPITAL; RE THE PRACTICAL NURSES FEDERATION OF ONTARIO .....(July)

934

Change in Working Conditions - Employee - Ratification and Strike Vote - Strike - Strike Replacement Workers - Unfair Labour Practice - Union's compliance with section 74(5) of

Act arising in context of strike replacement application - Whether laid off employee with only possibility of recall entitled to participate in strike vote - Parties agreeing that individual entitled to vote only if found to be employee in bargaining unit - Board finding individual without sufficiently substantial employment attachment to be considered employee within bargaining unit with entitlement to vote - Board finding that employer carrying on business as before in hiring students who had worked for it for the last 4 summers and not recalling individual from lay-off who had worked for it for three weeks almost one year earlier - Applications alleging violation of statutory freeze and violation of strike replacement ban dismissed

GOULARD LUMBER (1971) LIMITED, MARK GOULARD AND ROMEO GOULARD RE IWA-CANADA, LOCAL 1-2693 AND LEO LAFLEUR ..... (Oct.) 1334

Change in Working Conditions - *Hospital Labour Disputes Arbitration Act* - Interference in Trade Unions - Unfair Labour Practice - Board dismissing union's complaint alleging that hospital employer violating Act by instituting new benefits plan for non-unionized employees and raising long term disability premium for union's members

THE HOSPITAL FOR SICK CHILDREN; RE CUPE, LOCAL 2816 ..... (Sept.) 1255

Change in Working Conditions - Interference in Trade Unions - Interim Relief - Remedies - Unfair Labour Practice - New schedule alleged by union to violate statutory freeze and to be motivated by anti-union considerations - Union filing unfair labour practice complaint and seeking interim relief - Balance of harm weighing in favour of union - Employer directed to revoke new scheduling system and to reinstate prior system on interim basis pending disposition of union's unfair labour practice complaint

VISTAMERE RETIREMENT RESIDENCE, 678114 ONTARIO INC. C.O.B. AS; RE PRACTICAL NURSES FEDERATION OF ONTARIO ..... (Sept.) 1274

Change in Working Conditions - Interference in Trade Unions - Intimidation and Coercion - Unfair Labour Practice - Board finding that installation of video surveillance cameras in workplace motivated, at least in part, by anti-union *animus* - Installation of cameras also violating statutory freeze - Union's complaint allowed and employer directed to remove cameras forthwith

ROYALGUARD VINYL CO., A DIVISION OF ROYPLAST LIMITED; RE USWA ..... (Jan.) 59

Change in Working Conditions - Interim Relief - Related Employer - Remedies - Unfair Labour Practice - Board making interim order directing employer to rescind or suspend operation of new arrangements affecting employees pending determination of union's complaint or expiration of "freeze", whichever first occurs

CHECKER LIMOUSINE AND AIRPORT SERVICE, G. HANLON HOLDINGS INC., G.J. HANLON ("HANLON") AND J. ORENDORFF, 947465 ONTARIO LTD., C.O.B. AS; RE RETAIL WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF THE UNITED STEELWORKERS OF AMERICA, LOCALS 414, 422, 440, 448, 461, 483, 488, 1000 AND 1688 ..... (Aug.) 991

Change in Working Conditions - Interim Relief - Remedies - Unfair Labour Practice - Board directing employer to maintain present scheduling system on interim basis pending disposition of union's unfair labour practice application

VISTAMERE RETIREMENT RESIDENCE, 678114 ONTARIO INC. C.O.B. AS; RE PRACTICAL NURSES FEDERATION OF ONTARIO ..... (Nov.) 1602

Change in Working Conditions - Interim Relief - Remedies - Unfair Labour Practice - Union alleging that change in benefit plan and change in method of wage payment to particular

classification improperly motivated and violating statutory freeze - Union's application for interim relief dismissed on grounds of delay

THE BRICK WAREHOUSE CORPORATION; RE SEU LOCAL 268, AFFILIATED WITH THE S.E.I.U., A.F. OF L., C.I.O. AND C.L.C. ....(Aug.) 1116

Change in Working Conditions - Interim Relief - Unfair Labour Practice - Remedies - Board directing employer to defer implementation of announced shift/schedule changes pending determination of union's unfair labour practice complaint

MULTIPAK LTD.; RE TORONTO TYPOGRAPHICAL UNION NO. 91-0 .....(July) 884

Change in Working in Conditions - Discharge - Discharge for Union Activity - Interim Relief - Remedies - Unfair Labour Practice - Union filing unfair labour practice complaint in respect of employee's discharge and in respect of work reorganization and second employee's demotion alleged to violate statutory freeze - Union seeking interim relief pending determination of complaint - Board declining to order reinstatement of discharged employee but directing employer to continue or restore second employee's terms and conditions of employment on interim basis

OMBUDSMAN ONTARIO; RE OPEIU, LOCAL 343 .....(July) 885

Charges - Certification - Employee - Employer Support - Evidence - Membership Evidence - Board determining that employee who initiated union organizing campaign not managerial nor employed in position confidential to labour relations and that section 13 of the Act having no application - Evidence not indicating that membership evidence unreliable as indicator that more than 55% of employees in bargaining unit had applied to be union members at date of application - Certificate issuing

BANNERMAN ENTERPRISES INC.; RE USWA; RE GROUP OF EMPLOYEES.....(Nov.) 1489

Charges - Certification - Evidence - Fraud - Intimidation and Coercion - Membership Evidence - Petition - Practice and Procedure - Timeliness - Union's certification application sent by registered mail on August 11 and employees' petition received by private courier at Board's office on August 12 - Rules of Procedure providing that date of filing is date document received by Board or, if mailed by registered mail, date on which it is mailed as verified by Post Office - Combined operation of section 8(4) of the Act and Board's Rules making petition untimely - Board dismissing objecting employees' allegations concerning union's collection of membership evidence for failure to make out *prima facie* case - Board declining objecting employees' request that Board exercise its discretion under section 8(3) of the Act to order representation - Certificate issuing

LUTHERAN NURSING HOME (OWEN SOUND); RE CLC; RE ROSANNE GILLARD AND SANDRA MARSHALL ..... (Oct.) 1362

Charges - Certification - Evidence - Intimidation and Coercion - Membership Evidence - Practice and Procedure - Board declining to receive into evidence certain allegations which did not comply with Rules 14 and 16 of Board's Rules of Procedure - Board declining to receive other proffered evidence offending collateral evidence rule - Board not satisfied that allegations that union organizers had attempted to obtain membership evidence through coercion substantiated - Certificate issuing - Employer's reconsideration application dismissed

ROYALGUARD VINYL CO., A DIVISION OF ROYPLAST LIMITED; RE SAMUEL OFOSU ANSAH; RE USWA.....(Aug.) 1057

Charges - Certification - Intimidation and Coercion - Fraud - Membership Evidence - Reconsideration - Unfair Labour Practice - Following union's certification, certain employees making unfair labour practice application complaining about manner in which fellow employee collected membership evidence - Employer also seeking reconsideration of certification deci-



sion - Board hearing evidence of nine persons and resolving conflicting evidence in favour of union's witness - Board finding that employee collector did not contravene *Act* when he approached employees to obtain membership evidence - Employee collector's actions not causing Board to conclude that filed membership evidence unreliable - Applications dismissed

MADAWASKA HARDWOOD FLOORING INC.; RE IWA - CANADA.....(Mar.) 267

Charges - Certification - Intimidation and Coercion - Membership Evidence - Board finding no substance to allegations that union's conduct created "profound fear" among employees as to whether they should join union - Evidence not supporting conclusion that union collected membership evidence through intimidation or material misrepresentation - Certificate issuing

DUALEX ENTERPRISES INC., A DIVISION OF DEPCO INTERNATIONAL INCORPORATED; RE CAW-CANADA; RE GROUP OF EMPLOYEES.....(Dec.) 1641

Charges - Certification - Intimidation and Coercion - Membership Evidence - Board persuaded that allegations made not causing Board to doubt validity of membership evidence signed - Interim certificate issuing

MY COUSIN'S RESTAURANT), FJS HOLDINGS (C.O.B. AS; RE HOSPITALITY & SERVICE TRADES UNION LOCAL 261.....(Nov.) 1572

Charges - Certification - Intimidation and Coercion - Membership Evidence - Employees alleging that they had been intimidated and coerced by union organizers into signing membership evidence - Board outlining its approach when considering charges of improper conduct in collection of membership evidence - Board finding no reason in this case to doubt validity of cards submitted on behalf of employees - Certificate issuing

DAVIS DISTRIBUTING LIMITED; RE TEAMSTERS LOCAL UNION NO. 419; RE CHANDRABALLI MUSSAI AND MICHELLE MCCREADY, GROUP OF EMPLOYEES.....(Sept.) 1190

Charges - Certification - Intimidation and Coercion - Petition - Membership Evidence - UFCW applying to represent bargaining unit of grocery store's meat department employees - Board according no weight to timely petition making reference to RWDSU and signed by employees before UFCW membership evidence collected - Board dismissing employer's allegations that membership evidence collected through intimidation and coercion - Certificate issuing

R.J. CHARTRAND HOLDINGS LIMITED C.O.B. AS CHARTRAND'S YOUR INDEPENDENT GROCER; RE UFCW, LOCAL 633; RE GROUP OF EMPLOYEES.....(Oct.) 1407

Charges - Certification - Membership Evidence - Certain employees alleging improprieties in collection of membership evidence by union - Board satisfied that allegations not impugning or casting doubt on membership evidence - Board rejecting evidence by employee to effect that she did not know that she was signing application for union membership when signing union card - Certificate issuing

ROY AYRANTO SALES LIMITED; RE USWA; RE GROUP OF EMPLOYEES.....(Mar.) 285

Charges - Certification - Representation Vote - Signing of "Consent and Waiver" form precluding employer from relying on alleged union improprieties which it was aware of on date of vote in order to set aside representation vote - Board, in any event, determining that employer's

allegations even if true would not lead to dismissal of certification application or ordering of new vote, as requested by employer - Certificate issuing

THE CANADIAN RED CROSS SOCIETY (ONTARIO DIVISION); RE SEU, LOCAL 210 .....(Nov.)

1592

Charter of Rights and Freedoms - Bargaining Unit - Certification - Constitutional Law - Employee - Membership Evidence - Board determining that section 8(4) of the *Act* not violating freedoms of expression, association and right to equal treatment set out in *Charter* - Board dismissing employees' objections to validity of trade union's membership evidence - Board finding union's proposed "all employee" unit appropriate and rejecting employer's assertion that the retail and service components of its business so distinct that employees in those components not sharing community of interests - Board finding "hardware department manager" to be "employee" within meaning of the *Act* - Certificate issuing

KEN BODNAR ENTERPRISES INC.; RE USWA; RE GROUP OF EMPLOYEES..... (June)

688

Charter of Rights and Freedoms - Constitutional Law - Duty of Fair Representation - School Boards and Teachers Collective Negotiations Act - Unfair Labour Practice - Board rejecting submission that section 2(1)(f) of the *Labour Relations Act* violating section 7 of the Charter by depriving teachers of the right to bring complaints of unfair representation against their bargaining agent - Board without jurisdiction to deal with application - Application dismissed

GRANT TADMAN; RE ONTARIO ENGLISH CATHOLIC TEACHERS' ASSOCIATION TORONTO SECONDARY UNIT; RE METROPOLITAN SEPARATE SCHOOL BOARD .....(Aug.)

1096

Collective Agreement - Abandonment - Accreditation - Bargaining Rights - Construction Industry - Construction Industry Grievance - Employer Support - Judicial Review - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractors Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Respondent applying for judicial review on ground that full Board meeting violated rules of natural justice and seeking interim relief - Motions Court judge granting order compelling attendance of chair, vice-chair and registrar before special examiner to obtain information respecting Board procedures - Motion to produce various reports and documents dismissed - Full panel of Divisional Court allowing appeal and setting aside order of motions court judge

ELLIS-DON LIMITED; RE THE ONTARIO LABOUR RELATIONS BOARD AND IBEW, LOCAL 894.....(Jan.)

113

Collective Agreement - Abandonment - Accreditation - Bargaining Rights - Construction Industry - Construction Industry Grievance - Employer Support - Judicial Review - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractors Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Respondent applying for judicial review on

ground that full Board meeting violated rules of natural justice and seeking interim relief - Motions Court judge granting order compelling attendance of chair, vice-chair and registrar before special examiner to obtain information respecting Board procedures - Motion to produce various reports and documents dismissed - Full panel of Divisional Court allowing appeal and setting aside order of motions court judge - Court of Appeal dismissing motion for leave to appeal

ELLIS-DON LIMITED; THE OLRB AND IBEW, LOCAL 894..... (June) 801

Collective Agreement - Certification - Pre-Hearing Vote - Timeliness - Trade Union Status - Staff Association wishing to displace CUPE as bargaining agent for employees of Board of Education - Staff Association found to be trade union within meaning of *Labour Relations Act* - Board concluding that extension of collective agreement to March 31, 1996 pursuant to section 35 of *Social Contract Act* making staff association's certification application untimely

OTTAWA BOARD OF EDUCATION; RE CUPE AND ITS LOCAL 1400; RE EDUCATION SUPPORT STAFF ASSOCIATION ..... (Aug.) 1024

Collective Agreement - Termination - Timeliness - Union alleging that termination application untimely because collective agreement in effect - Employer submitting that no collective agreement in effect and that, as result of union striking, offer it had made no longer outstanding for union to accept - Board determining that collective agreement in effect and that application untimely - Application to terminate bargaining rights dismissed

SHOPPERS DRUG MART, KATALIN LANCZI PHARMACY LTD. C.O.B. AS; RE PAMELA BLAIS; RE RWDSU, CANADIAN SERVICE SECTOR DIVISION OF THE USWA, LOCALS 414, 422, 440, 448, 461, 483, 488, 1000 AND 1688..... (Oct.) 1419

Combination of Bargaining Units - Bargaining Unit - Certification - Security Guard - Union seeking to combine newly certified unit of security guards with pre-existing all-employee unit of municipality's employees - Parties requesting that Board first determine whether security guards monitor other employees so as to give rise to conflict of interest if included in those employees' bargaining unit - Board satisfied that monitoring of other employees by guards raising real possibility of conflict of interest if guards included in same bargaining unit - Application remitted back to parties

THE MUNICIPALITY OF METROPOLITAN TORONTO; RE CUPE, LOCAL 79..... (June) 795

Combination of Bargaining Units - Bargaining Unit - Certification - Union already representing certain employees of employer - Union applying for certification in respect of tag-end municipal unit - Employer urging Board to create four separate bargaining units designated by street address and function - Employer submitting that part of employer's organization might be found to be "hospital" within meaning of *Hospital Labour Disputes Arbitration Act (HLDAA)* - Board finding *HLDAA* concern to be speculative and not persuaded that employees covered by *HLDAA* must be included in separate unit - Board observing that more comprehensive unit usually appropriate unless serious labour relations problems demonstrably overwhelm difficulties associated with fragmentation or unless larger unit is idiosyncratic or perverse - Board noting that more comprehensive unit presumptively appropriate, if that is what union has organized and applied for - Union's proposed unit found to be appropriate - Certificate issuing - On agreement of parties, Board directing that newly-certified bargaining unit should be combined with unit already represented by union

THE GOVERNING COUNCIL OF THE SALVATION ARMY IN CANADA AND BERMUDA; RE OPSEU ..... (Jan.) 85

Combination of Bargaining Units - Bargaining Unit - Certification - Union already representing full-time production and non-production employees in separate units with geographic description covering Province of Ontario - Union applying to be certified for single unit of



- part-time employees covering Province of Ontario - Employer without employees at locations other than North Bay and Sturgeon Falls - Board finding single bargaining unit of part-time employees in North Bay and Sturgeon Falls to be appropriate - Interim certificate issuing - Union applying to combine the units - Board rejecting employer's submission that serious labour relations problem created by shift in bargaining power or possibility that printing operation and newspaper operation would both be shut down in event of strike - Board directing that two full-time units be combined with interim certified part-time unit
- THE NORTH BAY NUGGET, A DIVISION OF SOUTHAM INC.; RE NORTH BAY NEWSPAPER GUILD, LOCAL 241, THE NEWSPAPER GUILD (CLC, AFL-CIO) .....(Aug.) 1137
- Combination of Bargaining Units - Bargaining Unit - Employer operating movie theatres across Ontario and North America - Over two month period, union having organized seven "front-of-house" bargaining units located in Brampton, Scarborough, Mississauga, Guelph, Sudbury and Toronto - Board allowing union's application under section 7 of the *Act* to combine the bargaining units
- CINEPLEX ODEON CORPORATION; RE IATSE .....(July) 824
- Combination of Bargaining Units - Bargaining Unit - Employer's employees in separate bargaining units represented by separate locals of same trade union - Board dismissing application to combine bargaining units
- FPC FLEXIBLE PACKAGING CORPORATION; RE GRAPHIC COMMUNICATIONS INTERNATIONAL UNION, LOCAL N-1 AND GRAPHIC COMMUNICATIONS INTERNATIONAL UNION, LOCAL 500M .....(July) 844
- Combination of Bargaining Units - Bargaining Unit - Hospital Labour Disputes Arbitration Act - Reference - Board finding residential care programme of children's treatment centre to be "hospital" within meaning of Hospital Labour Disputes Arbitration Act, and that whole of treatment centre also a "hospital" within meaning of the *Act* - Union holding bargaining rights for unit of employees working in group homes in residential care programme and for two units of therapists at treatment centre - Union's application to combine bargaining units allowed
- GEORGE JEFFREY CHILDREN'S TREATMENT CENTRE; SEU, LOCAL 268 .....(Dec.) 1656
- Combination of Bargaining Units - Bargaining Unit - Practice and Procedure - Remedies - Board earlier combining employer's "parts" and "manufacturing" bargaining units - Parties unable to resolve outstanding remedial issues surrounding application - Board directing parties to file further pleadings in order to facilitate hearing
- FMG TIMBERJACK INC.; RE GLASS, MOLDERS, POTTERY, PLASTICS & ALLIED WORKERS INTERNATIONAL UNION ..... (Oct.) 1333
- Combination of Bargaining Units - Bargaining Unit - Practice and Procedure - Remedies - Board in earlier decision combining full-time and part-time units and remaining seized to deal with further relief - Union subsequently asking Board to set matter down for hearing with respect to remedial relief - Before listing matter for hearing, Board directing union to provide it and employer with detailed description of orders or remedies requested and detailed statement of all material facts on which it relies in accordance with Rule 12 - Employer directed to reply within seven days and to supply information required by Rule 14
- MARRIOTT CORPORATION (AT CARLETON UNIVERSITY); RE CUPE AND ITS LOCAL 2451 .....(Aug.) 1016
- Combination of Bargaining Units - Bargaining Unit - Practice and Procedure - Union seeking to combine "inside" unit and "works" unit of municipal hydro-electric commission - Board

inviting employer to call its evidence first as to why application ought not to be granted - Board satisfied that combination order would reduce fragmentation and facilitate viable and stable collective bargaining without causing serious labour relations problems - Board directing that bargaining units be combined

THE HYDRO-ELECTRIC COMMISSION OF THE CITY OF OTTAWA; RE IBEW, LOCAL 636 ..... (Apr.) 516

Combination of Bargaining Units - Bargaining Unit - Remedies - Board earlier combining newly-certified unit with already-existing bargaining unit, and remaining seized - Board declining to make direction under section 7(5) where parties had not engaged in real negotiations concerning terms and conditions of employment of newly certified employees - Board remaining seized

OLYMPIA & YORK DEVELOPMENTS LIMITED; RE INDEPENDENT CANADIAN TRANSIT UNION AND ITS LOCAL 6 ..... (May) 583

Combination of Bargaining Units - Bargaining Unit - Remedies - Union seeking to combine newly certified editorial bargaining unit in Simcoe County with existing bargaining unit covering various locations including Metropolitan Toronto - Employer submitting that should Board grant union's application, Board should direct freeze of terms and conditions of Simcoe employees and Board should not remain seized of further outstanding issues - Board directing that bargaining units be combined and remaining seized to deal with any further remedial relief

METROLAND PRINTING, PUBLISHING AND DISTRIBUTING LTD.; RE SOUTHERN ONTARIO NEWSPAPER GUILD LOCAL 87, THE NEWSPAPER GUILD (CLC, AFL-CIO) ..... (Feb.) 160

Combination of Bargaining Units - Bargaining Unit - Union applying to combine newly certified movie theatre "front-of-the-house" bargaining units in Toronto and Ottawa - Board not accepting employer's argument that combination would not reduce fragmentation of bargaining units - Board directing that the bargaining units be combined

FAMOUS PLAYERS INC.; RE IATSE ..... (Nov.) 1527

Combination of Bargaining Units - Bargaining Unit - Union seeking to combine existing full-time and part-time bargaining units - Possibility that Board's decision may enhance union's bargaining power entirely speculative and posing no threat to viable and stable collective bargaining - Board directing that bargaining units be combined

MARRIOTT CORPORATION (AT CARLETON UNIVERSITY); RE CUPE AND ITS LOCAL 2451 ..... (Feb.) 151

Consent to Prosecute - Interim Relief - Remedies - Unfair Labour Practice - Union filing complaint and seeking consent to prosecute in respect of alleged violation of earlier Board order directing that key union supporter be reinstated to office duties - Union seeking interim order reinstating employee - Board noting considerable labour relations harm of leaving Board order in state of non-compliance - Board directing that employee be reinstated and that employer post Board notice in workplace

BANNERMAN ENTERPRISES INC.; RE USWA ..... (Sept.) 1179

Constitutional Law - Bargaining Unit - Certification - Charter of Rights and Freedoms - Employee - Membership Evidence - Board determining that section 8(4) of the *Act* not violating freedoms of expression, association and right to equal treatment set out in *Charter* - Board dismissing employees' objections to validity of trade union's membership evidence - Board finding union's proposed "all employee" unit appropriate and rejecting employer's assertion that the retail and service components of its business so distinct that employees in

those components not sharing community of interests - Board finding "hardware department manager" to be "employee" within meaning of the *Act* - Certificate issuing

KEN BODNAR ENTERPRISES INC.; RE USWA; RE GROUP OF EMPLOYEES..... (June)

688

Constitutional Law - Certification - Reconsideration - Employer operating flour mill and seeking reconsideration of 1991 decision certifying trade union - Employer asserting that its operations involve federal work and that Board without constitutional jurisdiction to deal with 1991 certification decision - Board noting that bargaining rights granted by certificate since subsumed by collective agreement entered into by union and employer - Decision on constitutional propriety of certificate issued in 1991 would not resolve constitutional issue which would continue to exist between the parties - Board declining to entertain reconsideration request

MCCARTHY MILLING LIMITED; RE UFCW, LOCAL 175; RE ADM-AGRI INDUSTRIES LIMITED..... (May)

577

Constitutional Law - Charter of Rights and Freedoms - Duty of Fair Representation - School Boards and Teachers Collective Negotiations Act - Unfair Labour Practice - Board rejecting submission that section 2(1)(f) of the *Labour Relations Act* violating section 7 of the Charter by depriving teachers of the right to bring complaints of unfair representation against their bargaining agent - Board without jurisdiction to deal with application - Application dismissed

GRANT TADMAN; RE ONTARIO ENGLISH CATHOLIC TEACHERS' ASSOCIATION TORONTO SECONDARY UNIT; RE METROPOLITAN SEPARATE SCHOOL BOARD ..... (Aug.)

1096

Constitutional Law - Construction Industry - Construction Industry Grievance - Judicial Review - Board dismissing employer's submission that construction of banks by bank employees within sphere of federal labour relations - Board assuming jurisdiction to deal with grievance - Bank seeking judicial review - Divisional Court finding construction of new bank building to be ordinary construction activity and within provincial jurisdiction - Judicial review application dismissed - Motion for leave to appeal dismissed by Court of Appeal - Application for leave to appeal to Supreme Court of Canada dismissed

TORONTO-DOMINION BANK, THE; RE CJA, LOCAL 785, ONTARIO LABOUR RELATIONS BOARD, ATTORNEY GENERAL OF CANADA AND ATTORNEY GENERAL OF ONTARIO ..... (Jan.)

127

Constitutional Law - Construction Industry - Ironworkers' union and other unions disputing various work assignments made to Power Workers' union in connection with fabrication and installation of monorail systems at nuclear generating station of Ontario Hydro - Power Workers' union challenging Board's constitutional jurisdiction to determine jurisdictional dispute involving nuclear facility - Board determining that work in dispute falling within provincial jurisdiction and that Board having constitutional jurisdiction to adjudicate dispute - Board directing that work in dispute be assigned to Ironworkers' union and other unions

ONTARIO HYDRO, EPSCA, CUPE, LOCAL 1000; RE BSOIW, LOCAL 736 .... (June)

752

Constitutional Law - Intimidation and Coercion - Unfair Labour Practice - Hydro employee alleging various acts of intimidation by employer related to exercise of rights under the *Act* - Employer alleging that Board without jurisdiction on ground that applicant's employment relationship with Hydro governed by *Canada Labour Code* - Applicant involved in inspecting nuclear facilities - Board concluding that inspections carried on by applicant 'integral',



‘vital’ or ‘essential’ in relation to production of nuclear energy - Board concluding that applicant’s employment relationship governed by federal legislation - Application dismissed

ONTARIO HYDRO; RE EUGENE KALWA; RE THE SOCIETY OF ONTARIO HYDRO PROFESSIONAL AND ADMINISTRATIVE EMPLOYEES .....(Mar.)

277

Construction Industry - Abandonment - Accreditation - Bargaining Rights - Collective Agreement - Construction Industry Grievance - Employer Support - Judicial Review - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent’s submission on employer support rejected - Union’s withdrawal of 1980 grievance not giving rise to estoppel - Union’s failure to include respondent on Schedule “F” in connection with 1975 accreditation of Electrical Contractors Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Respondent applying for judicial review on ground that full Board meeting violated rules of natural justice and seeking interim relief - Motions Court judge granting order compelling attendance of chair, vice-chair and registrar before special examiner to obtain information respecting Board procedures - Motion to produce various reports and documents dismissed - Full panel of Divisional Court allowing appeal and setting aside order of motions court judge

ELLIS-DON LIMITED; RE THE ONTARIO LABOUR RELATIONS BOARD AND IBEW, LOCAL 894.....(Jan.)

113

Construction Industry - Abandonment - Accreditation - Bargaining Rights - Collective Agreement - Construction Industry Grievance - Employer Support - Judicial Review - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent’s submission on employer support rejected - Union’s withdrawal of 1980 grievance not giving rise to estoppel - Union’s failure to include respondent on Schedule “F” in connection with 1975 accreditation of Electrical Contractors Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Respondent applying for judicial review on ground that full Board meeting violated rules of natural justice and seeking interim relief - Motions Court judge granting order compelling attendance of chair, vice-chair and registrar before special examiner to obtain information respecting Board procedures - Motion to produce various reports and documents dismissed - Full panel of Divisional Court allowing appeal and setting aside order of motions court judge - Court of Appeal dismissing motion for leave to appeal

ELLIS-DON LIMITED; THE OLRB AND IBEW, LOCAL 894.....(June)

801

Construction Industry - Abandonment - Bargaining - Construction Industry Grievance - Board not persuaded that period of inaction in roads sector between 1988 and 1992 sufficient to warrant finding of abandonment in that sector of bargaining rights granted in multi-sector certificate - Board setting out parties’ submissions in respect of whether employer nevertheless bound by “cross-over” clause in collective agreement negotiated by accredited employer organization - Employer arguing that employer association had no right to bargain beyond sector for which it was accredited, at least for non-members - Accredited employer organization given ten working days to indicate whether it wishes to make representations in connection with “cross-over” clause issue

ELIRPA CONSTRUCTION AND MATERIALS LIMITED; RE IUOE, LOCAL 793 .....(Apr.)

372

Construction Industry - Abandonment - Bargaining Rights - Construction Industry Grievance -

Road building contractor entering into voluntary recognition agreement with union in August 1990 - Employer applying collective agreement until September 1991 when it returned to operating as non-union contractor - Union grieving non-compliance with agreement in November 1992 - Board rejecting employer's submission that grievance not arbitrable on basis that union had abandoned bargaining rights

ASSOCIATED CONTRACTING INC.; RE IUOE, LOCAL 793 .....(Aug.) 951

Construction Industry - Abandonment - Bargaining Rights - Reference - Board not persuaded that 15 month delay between no-board report and request for first contract arbitration, of itself, sufficient to warrant conclusion that union abandoned bargaining rights - Board advising Minister of Labour that union's bargaining rights not abandoned

DYNAMO MASONRY CONTRACTING LTD.; RE BAC, LOCAL 2 .....(Apr.) 369

Construction Industry - Abandonment - Construction Industry Grievance - Employer alleging abandonment of bargaining rights in context of union's grievance referral - Board denying union's preliminary objections to effect that issue of abandonment *res judicata* and that employer could not establish *prima facie* case

ASSOCIATED CONTRACTING INC.; RE IUOE, LOCAL 793 .....(Mar.) 197

Construction Industry - Adjournment - Construction Industry Grievance - Jurisdictional Dispute - Parties - Practice and Procedure - Board rejecting employer's motion that Board defer consideration of grievance to allow it to file jurisdictional dispute complaint - Board noting that parties had not addressed whether employer's unrepresented labourers, Labourers' union, or other contractors have status to intervene in the proceeding

SARNIA WOLVERINE MANUFACTURING LTD.; RE UA, LOCAL UNION 663 .....(Jan.) 68

Construction Industry - Adjournment - Construction Industry Grievance - Jurisdictional Dispute - Practice and Procedure - Ironworkers' union grieving failure to assign its members certain work - Millwrights' union seeking to intervene - Millwrights' submitting that grievance inarbitrable because Ironworkers' asking Board to enforce order made in *The State Group* case and because dispute raised in grievance is jurisdictional dispute - Board adjourning section 126 proceeding pending filing and disposition of jurisdictional dispute complaint under section 93 of the *Act*

E.S. FOX LIMITED, ONTARIO ERECTORS ASSOCIATION INCORPORATED; RE BSOIW, LOCAL 700; RE MILLWRIGHTS DISTRICT COUNCIL OF ONTARIO ON ITS OWN BEHALF AND ON BEHALF OF ITS LOCAL 1244 ..... (May) 543

Construction Industry - Adjournment - Evidence - Judicial Review - Jurisdictional Dispute - Natural Justice - Practice and Procedure - Witness - Carpenters' and Sheet Metal Workers' unions disputing assignment of work in connection with handling, distribution, rigging, erection and installation of sheet metal siding onto wood - Board confirming assignment to members of Sheet Metal Workers' union - Board summarizing various evidentiary and procedural rulings made during lengthy proceeding - Board not allowing Carpenters' union to call area practice evidence to the extent that its materials had not been properly particularized - Board not permitting Sheet Metal Workers' union to call witness who had already once testified - Other than in reply, a party should not be permitted to recall a witness except in extraordinary circumstances - Carpenters' union moving to terminate proceedings after 10 days of hearing following settlement of its grievance (which constituted initial demand for work in dispute) - Motion to terminate proceedings dismissed - Board noting that jurisdictional dispute proceedings should not generally be terminated after hearing on the merits has begun where it is clear that jurisdictional dispute still exists - Carpenters'

union applying for judicial review on grounds of alleged denial of natural justice - Divisional Court dismissing application with costs

VIC WEST STEEL LIMITED, ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE, SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL 539 AND OLRB; RE CJA, LOCAL 1256..... (June) 803

Construction Industry - Certification - Certification Where Act Contravened - Interference in Trade Unions - Board finding lay-off of nine employees tainted by anti-union animus - Union certified under section 9.2 of the Act

DOMUS INDUSTRIES LTD.; RE PAT, LOCAL UNION 1891 ..... (Dec.) 1630

Construction Industry - Certification - Certification Where Act Contravened - Discharge for Union Activity - Interference in Trade Unions - Intimidation and Coercion - Remedies - Unfair Labour Practice - Employer violating Act in threatening and intimidating one employee with respect to union membership and in laying off second employee because of his union activity - Reinstatement with compensation ordered - Board determining that as result of employer's violations true wishes of employees unlikely to be ascertained - Union certified under section 9.2 of the Act

BASILE INTERIORS LTD.; RE PAT, LOCAL 1494 ..... (Aug.) 963

Construction Industry - Certification - Membership Evidence - Reconsideration - Settlement - Union certified after entering into minutes of settlement with employer regarding description of bargaining unit and list of employees at work on application date - Employer seeking reconsideration of certification decision and relying on various grounds, including assertion that it had not received legal advice prior to signing settlement document, that it included specimen signatures for only 4 of 5 employees on the list and that it did so only after the terminal date - Employer also alleging non-sign - Board finding no basis for doubting reliability of membership evidence filed or for reconsidering its decision on any other basis - Reconsideration application dismissed

MARLI MECHANICAL LTD.; RE UA, LOCAL UNION 46 ..... (June) 725

Construction Industry - Certification - Reconsideration - Board certifying union in ICI and non-ICI bargaining units - Employer applying for reconsideration two weeks later on various grounds including its assertion that it had received an incomplete package of materials from the Board in connection with the union's application and that it had been misled as to its obligations by comments from a clerk at the Board - Application dismissed

JAMES JOHNSTON MECHANICAL CONTRACTING LTD.; RE LOCAL UNION 47 SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION..... (Dec.) 1671

Construction Industry - Certification - Representation Vote - Employee filing objection and asking Board to conduct new representation vote on ground that he made mistake in marking ballot - Employee alleging that instructions on ballot confusing - Board concluding that any confusion on employee's part not attributable to form of ballot or instructions given to voters - Certificates issuing

WINDSOR ELEVATOR SERVICE INC.; RE INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS, LOCAL NO. 90; RE CONSTRUCTION WORKERS, LOCAL 53, CLAC ..... (Mar.) 334

Construction Industry - Constitutional Law - Construction Industry Grievance - Judicial Review - Board dismissing employer's submission that construction of banks by bank employees within sphere of federal labour relations - Board assuming jurisdiction to deal with grievance - Bank seeking judicial review - Divisional Court finding construction of new bank building to be ordinary construction activity and within provincial jurisdiction - Judicial



review application dismissed - Motion for leave to appeal dismissed by Court of Appeal - Application for leave to appeal to Supreme Court of Canada dismissed

TORONTO-DOMINION BANK, THE; RE CJA, LOCAL 785, ONTARIO LABOUR RELATIONS BOARD, ATTORNEY GENERAL OF CANADA AND ATTORNEY GENERAL OF ONTARIO .....(Jan.)

127

Construction Industry - Constitutional Law - Ironworkers' union and other unions disputing various work assignments made to Power Workers' union in connection with fabrication and installation of monorail systems at nuclear generating station of Ontario Hydro - Power Workers' union challenging Board's constitutional jurisdiction to determine jurisdictional dispute involving nuclear facility - Board determining that work in dispute falling within provincial jurisdiction and that Board having constitutional jurisdiction to adjudicate dispute - Board directing that work in dispute be assigned to Ironworkers' union and other unions

ONTARIO HYDRO, EPSCA, CUPE, LOCAL 1000; RE BSOIW, LOCAL 736 .... (June)

752

Construction Industry - Construction Industry Grievance - Trade Union - Labourers' union alleging that MTABA breaching subcontracting provision of collective agreement - Subcontracting provision effective only if Labourers' Local 183 and Bricklayers' Local 1 form "common union" by specified date - Board satisfied that "common union" not formed - Grievance dismissed

METROPOLITAN TORONTO APARTMENT BUILDERS' ASSOCIATION; RE LIUNA, LOCAL 183.....(Nov.)

1568

Construction Industry - Construction Industry Grievance - Board applying *Great Lakes Fabricating* case and finding employer member of Sarnia Construction Association bound by province-wide ICI Labourers' collective agreement - Board finding union estopped from asserting its collective agreement rights in respect of any contract bid on or project commenced prior to date of Board's decision

ALUMA SYSTEMS CANADA INC.; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL ON BEHALF OF ITS AFFILIATED LOCAL UNIONS 183, 247, 491, 493, 506, 527, 597, 607, 625, 837, 1036, 1059, 1081 AND 1089; RE CARPENTERS AND ALLIED WORKERS LOCAL 27, CJA LOCAL 18.....(Nov.)

1469

Construction Industry - Construction Industry Grievance - Board determining that certain water lancing work performed on steam generators located within Hydro nuclear power facility not falling within terms of collective agreement between EPSCA and Boilermakers' union

BABCOCK & WILCOX, INTERNATIONAL DIVISION; RE BBF, LODGE 128.....(Mar.)

199

Construction Industry - Construction Industry Grievance - Board determining that employer who is not member of accredited employer association is not bound by agreement made by association for other than geographic area and sector for which it is accredited - Board finding that cross-over clause of sewer and watermain collective agreement not applicable to responding employer in road building sector

ELIRPA CONSTRUCTION AND MATERIALS LIMITED; RE IUOE, LOCAL 793; RE METROPOLITAN TORONTO SEWER AND WATERMAIN CONTRACTORS ASSOCIATION .....(July)

838

Construction Industry - Construction Industry Grievance - Board finding and declaring that employer discriminated against union steward and violated collective agreement by failing to offer him opportunity to work overtime on specified date - Grievance allowed

B & D INSULATION INC.; RE HFIA, LOCAL 95.....(Dec.)

1625

Construction Industry - Construction Industry Grievance - Board finding that certain landfill operations work not work within the construction industry - Grievance dismissed ROBERT HUME CONSTRUCTION LTD.; IUOE AND ITS LOCAL 793 ..... (Sept.)	1248
Construction Industry - Construction Industry Grievance - Board finding that collective agreement requires employer to pay \$70 travel allowance, regardless of whether or not an employee who works a day in "zone" incurs accommodation expense on night following work assignment - Grievances allowed MONTGOMERY KONE ELEVATOR CO.; RE IUEC, LOCAL 50 ..... (Apr.)	462
Construction Industry - Construction Industry Grievance - Damages - Reconsideration - Remedies - Board earlier refusing to enforce 120 per cent interest rate set out in collective agreement - Union's reconsideration application dismissed BAIRRADA MASONRY INC.; LIUNA, LOCAL 183 ..... (Mar.)	204
Construction Industry - Construction Industry Grievance - Damages - Remedies - Board earlier finding employer in violation of collective agreement in failing to subcontract certain work to company in contractual relations with Labourers' union - Parties failing to agree on whether damages owing - Board not accepting employer's assertion that, in order to prove entitlement to damages, union must prove that employer or union subcontractor had same equipment, expertise and supervisory capacity actually supplied by subcontractor used by employer - Union here showing that it had members available to perform contracted work and that it was within capability of union contractors or of the employer to perform work described in contract documents - Board satisfied that union proving its entitlement to compensation ELLIS-DON LIMITED; RE LIUNA, LOCAL 1036 AND LIUNA ONTARIO PROVINCIAL DISTRICT COUNCIL ..... (Apr.)	386
Construction Industry - Construction Industry Grievance - Damages - Remedies - Union seeking damages for wages owing against corporate employer and against corporate director in his personal capacity - Union relying on Ontario <i>Business Corporations Act (OBCA)</i> and <i>Employment Standards Act</i> in respect of order against director - Board concluding that Board without jurisdiction to enforce provisions of <i>OBCA</i> or <i>ESA</i> as if it were either a civil court in which a civil action had been commenced, or an employment standards officer making an order under the <i>ESA</i> - Board quantifying damages and making order against employer only SPENCER CONSTRUCTION COMPANY LTD. AND IAN SPENCER; RE CJA, LOCAL 2041..... (Feb.)	181
Construction Industry - Construction Industry Grievance - Discharge - Employer seeking to assign mechanic's work to "Helper" following completion of apprenticeship - Union refusing to issue "mechanic's card" - Employer advising grievor that if he did not work as "mechanic" he would be deemed to have quit - Board finding that employer's request that grievor work as mechanic without union referral violating collective agreement - Board concluding that grievor did not resign, but was discharged without just cause - Grievance allowed OTIS CANADA, INC., NATIONAL ELEVATOR AND EXCALATOR ASSOC.; RE IUEC LOCAL 50..... (Apr.)	469
Construction Industry - Construction Industry Grievance - Discharge - Timeliness - Practice and Procedure - Unfair Labour Practice - Board declining to dismiss grievances as untimely - Board declining to defer hearing of grievances until unfair labour practice complaint heard or until appeal to international union resolved DIXIE ELEVATOR LTD.; RE IUEC, LOCAL 50 ..... (May)	539

- Construction Industry - Construction Industry Grievance - Judicial Review - Settlement - Labour-Management Relations Committee hearing grievance at Step 3 of grievance procedure and issuing decision - Union submitting that matter in dispute thereby settled pursuant to grievance procedure set out in collective agreement - Board upholding union's preliminary motion, concluding that grievance settled, and directing employer to comply with terms of settlement - Employer's application for judicial review dismissed by Divisional Court
- E.S. FOX LIMITED; RE MILLWRIGHT DISTRICT COUNCIL OF ONTARIO ON ITS OWN BEHALF AND ON BEHALF OF ITS LOCAL 1007 AND OLRB .....(Nov.) 1609
- Construction Industry - Construction Industry Grievance - Municipal employer and union disputing interpretation of subcontracting provision inserted into collective agreement by arbitration board - City asserting that subcontracting provision only applying to transfers of work where City initially itself acquired contractual obligation to perform work - Union asserting that subcontracting provision applying whenever City having it within its power to pass on "down the chain" obligation to do construction work - Both interpretations rejected by Board - Board finding that arbitration board intended to distinguish between "prime" contracts and "subcontracts" and that collective agreement restricting subcontracting, but not restricting letting of prime contracts - Five grievances dismissed and one allowed
- THE CORPORATION OF THE CITY OF SAULT STE. MARIE; RE LIUNA, LOCAL 1036.....(Apr.) 496
- Construction Industry - Construction Industry Grievance - Practice and Procedure - Reconsideration - Employer failing to attend Board hearing and seeking to have Board reconsider decision making various orders and declarations - Employer claiming that union official represented that Board hearing scheduled for 2:30 p.m. and not 9:30 a.m. as indicated in Board's Notice of Hearing - Board finding that party who fails to check Notice of Hearing and chooses to rely on recollection or representation of others does so at its own risk - Reconsideration application dismissed
- JOHN MAGGIO EXCAVATING LTD.; RE IUOE, LOCAL 793 .....(Jan.) 31
- Construction Industry - Construction Industry Grievance - Practice and Procedure - Remedies - Whether certain job site in Kemptville falling within geographic area assigned to Labourers' union Local 247 under collective agreement - Board applying *M. Sullivan & Son* case and concluding that, under provincial agreement, no local union having exclusive jurisdiction over Kemptville - Employer not violating collective agreement when it hired from Local 527 rather than Local 247 - Grievance dismissed - Employer seeking costs - Board analyzing costs issue in detail and concluding that in section 126 proceedings, in absence of specific provision in collective agreement, Board has no jurisdiction to award legal costs as such - Board, however, directing Local 247 to reimburse employer for its share of section 126(4) expenses
- BELLAI BROTHERS LTD.; RE LIUNA, LOCAL 247; RE LIUNA, LOCAL 527 .(Jan.) 2
- Construction Industry - Construction Industry Grievance - Related Employer - Carpenters' union alleging that hotel and construction manager for hotel construction project constituting one employer for purposes of the *Act* - Union also grieving alleged violation of construction management provision of Carpenters' provincial agreement - Board finding that construction management provision of collective agreement contravened when bids solicited from non-union contractors for foundation work, but in no other respect - Board applying *Dalton* case and declining to exercise discretion under section 1(4) of the *Act* where contravention of construction management clause arising out of circumstances where construction manager did not acquire any right or obligation over work covered by agreement
- MAATEN CONSTRUCTION LIMITED; 865541 ONTARIO INC.; RE CJA, LOCAL 1256.....(Apr.) 438



- Construction Industry - Construction Industry Grievance - Sale of a Business - Related Employer  
- Board finding successor's owner to be quintessential "key person" and finding sale of a  
business under section 64 of the *Act* - Board also making related employer declaration  
under section 1(4) of the *Act*
- STEELES ELECTRIC, ELI'S ELECTRIC SERVICE, TOWN AND COUNTRY ELEC-  
TRIC LTD., TOWN AND COUNTRY ELECTRIC, STEELES ELECTRIC, E & E  
STEELES ELECTRIC LTD. C.O.B. AS E & E STEELES ELECTRIC C.O.B. AS; RE  
IBEW, LOCAL 353 ..... (May) 603
- Construction Industry - Construction Industry Grievance - Union alleging that lay-off violating  
provincial agreement and/or that employer acting in bad faith - Board finding that collective  
agreement requiring employee to maintain employment with one employer for one full  
period of six months or more before industry-wide seniority can be relied on by employee -  
Grievor accordingly unable to utilize his industry-wide seniority rights with the particular  
employer - Evidence not supporting conclusion that employer acting in bad faith - Griev-  
ance dismissed
- DOVER CORPORATION (CANADA) LTD.; RE IUEC LOCAL 90 ..... (Sept.) 1208
- Construction Industry - Discharge - Construction Industry Grievance - Employer's decision to  
remove grievor's seniority made contrary to collective agreement requiring written notice  
by registered mail to return to work - Grievor subsequently incorrectly laid off - Grievance  
allowed - Reinstatement with compensation ordered
- CHICAGO BLOWER, DIVISION OF EARLSCOURT METAL; RE SHEET METAL  
WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 30 ..... (June) 645
- Construction Industry - Discharge - Discharge for Union Activity - Practice and Procedure -  
Unfair Labour Practice - Board finding union's 8 1/2 month delay in bringing application  
undue and without justification - Application dismissed
- EASTERN WELDING, 655270 ONTARIO INC. C.O.B. AS; RE UA, LOCAL UNION  
819 ..... (June) 673
- Construction Industry - Discharge - Discharge for Union Activity - Unfair Labour Practice -  
Board finding lay-offs of five fitters related to union's certification application and therefore  
improper - Application allowed
- EASTERN POWER DEVELOPERS CORP.; RE UA, LOCAL UNION 46 ..... (Dec.) 1651
- Construction Industry - Discharge - Duty of Fair Referral - Duty of Fair Representation - Intimi-  
dation and Coercion - Practice and Procedure - Unfair Labour Practice - Board dismissing  
objection to vice-chair sitting alone in this case - Applicant complaining of threats related to  
his participation in Board proceeding, union charges laid against the applicant, the refusal  
to permit the applicant to lay union charges against a fellow member, the failure to refer  
the applicant to work on certain project, the union's failure to assist him with certain griev-  
ances, his discharge, and being struck from the hiring hall referral list because of his  
improper expulsion from the union - Responding parties asking Board to dismiss applica-  
tion on grounds of undue delay - Board considering effect of delay in construction industry -  
Board dismissing all aspects of complaint for delay, except for allegation concerning  
removal of applicant from hiring hall list - Nine month delay in respect of referral issue not  
so long as to cause Board to decline to hear complaint
- ROBERT DUMEAH; RE BSOIW LOCAL 700, K.E.W. STEEL FABRICATORS  
LTD. .... (June) 655
- Construction Industry - Duty of Fair Representation - Duty of Fair Referral - Unfair Labour  
Practice - Applicant alleging that union caused him to lose job by grieving against his

employer and disrupting the work site with overly frequent visits by business representatives in furtherance of campaign against him - Complaint dismissed

JOSE MARTINS; RE LIUNA, LOCAL 527 ..... (May) 560

Construction Industry - Evidence - Practice and Procedure - Related Employer - Remedies - In absence of contrary pleadings or evidence, Board deeming respondents to have accepted certain facts stated in application - Board finding five respondents engaged in related activities and finding common direction and control among four respondents - Board drawing adverse inferences from lack of production and lack of evidence produced by those respondents - Single employer declaration issuing in respect of four respondents - Board distinguishing *Golden Arm Flooring* case in respect of joint and several liability where damages awarded in earlier Board proceeding against one respondent predated relationship between it and other respondents - Application in respect of fifth respondent dismissed

CENTRAL FORMING & CONCRETE INC.; ALTRACON CONSTRUCTION LIMITED; GASPO CONSTRUCTION LIMITED; ASHWORTH ENGINEERING INC.; RE CARPENTERS AND ALLIED WORKERS, LOCAL 27, CJA ..... (July) 805

Construction Industry - Jurisdictional Dispute - Practice and Procedure - Labourers' union opposing Operative Plasterers' union's request to withdraw its jurisdictional dispute application - Board expressing view that it should hear complaints where dispute over correct assignment of the work continues to exist, unless there are compelling reasons not to do so - Board persuaded that leave to withdraw complaint should not be granted

DAFOE FLOOR CONCRETE CONSTRUCTION LTD., LIUNA, LOCAL 1059 AND; RE OPCM, LOCAL 598 ..... (July) 836

Construction Industry - Jurisdictional Dispute - Boilermakers' union and other unions disputing assignment of work in connection with demolition and removal of inactive heavy water plant in circumstances where the materials/equipment/facility demolished for scrap - Board confirming assignment of work in dispute to Labourers' union

MULTIDEM INC., EPSCA, DOMINION METAL AND REFINING WORKS LTD., LIUNA, LOCAL, 1059; RE BBF, LOCAL 128; INTERNATIONAL BROTHERHOOD OF OPERATING ENGINEERS, LOCAL 793; TEAMSTERS' LOCAL 230; BSOIW, LOCAL 736; THE IBEW ELECTRICAL POWER SYSTEMS CONSTRUCTION COUNCIL OF ONTARIO REPRESENTING THE FOLLOWING AFFILIATED LOCAL UNIONS: 105, 115, 120, 303, 353, 402, 532, 586, 773, 804, 894, 1687, 1739 AND 1788; UA, LOCAL 527 ..... (Feb.) 166

Construction Industry - Jurisdictional Dispute - IBEW and CUPE disputing assignment of electrical construction work performed on 115KV transmission line between Ontario Hydro transmission stations - Board determining that work ought to have been assigned to IBEW

ONTARIO HYDRO AND EPSCA AND POWER WORKERS' UNION; RE IBEW, LOCAL 1788 ..... (Oct.) 1404

Construction Industry - Jurisdictional Dispute - Labourers' union and IBEW disputing assignment of work in connection with installation of Trenwa duct system - Board directing that disputed work be assigned to IBEW in Board Area No. 2

ADAM CLARK COMPANY LTD., I.B.E.W., LOCAL 530 AND; RE L.I.U.N.A., LOCAL 1089 ..... (Jan.) 1

Construction Industry - Jurisdictional Dispute - Natural Justice - Practice and Procedure - Reconsideration - Labourers' union and Carpenters' union disputing assignment of work related to fabrication, installation and dismantling of bulkheads in Board Area 6 in ICI sector - Board directing that work be assigned to Carpenters - Labourers' union requesting recon-

sideration on various grounds, including assertion that "consultation" procedure violating rules of natural justice - Application for reconsideration dismissed

ROBERTSON YATES CORPORATION LIMITED, UNITED FLOOR COMPANY LTD., CJA, LOCAL 785; LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL, LOCALS 506 AND 1081..... (Oct.) 1411

Construction Industry - Jurisdictional Dispute - Practice and Procedure - Board reviewing general situation of jurisdictional disputes involving Ontario Hydro, CUPE Local 1000 and various construction unions with a view to constructing more economical, expeditious and perhaps global resolution of the disputes - Board neither processing nor scheduling new applications pending completion of its review

ONTARIO HYDRO, ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION AND; RE IBEW, LOCAL 1788, CUPE, LOCAL 1000 ..... (May) 592

Construction Industry - Jurisdictional Dispute - Sheet metal workers' union and Carpenters' union disputing assignment of work in connection with removal, handling and installation of plywood and wood blocking for flashing as part of re-roofing contract at paper mill in Cornwall - Board confirming assignment of disputed work to Sheet metal workers' union

AMHERST ROOFING AND SHEETMETAL LTD., CJA, LOCAL 93; RE ONTARIO SHEET METAL WORKERS' & ROOFERS' CONFERENCE, SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 269 ..... (Apr.) 339

Construction Industry - Jurisdictional Dispute - Sheet Metal Workers' union and Plumbers' union disputing assignment of work in connection with handling and installation of air handling units in Board Area 18 - Employer assigning work exclusively to Plumbers - Sheet Metal Workers asserting that work in dispute should have been done by composite crew of Sheet Metal Workers and Plumbers - Trade agreement favouring claim of Sheet Metal Workers, but prevailing practice in board area not consistent with trade agreement - Sheet Metal Workers having no collective bargaining relationship with employer - Board finding no reason to interfere with employer's assignment of work - Complaint dismissed

GROFF & ASSOCIATES LTD. AND UA, LOCAL 599; RE SMW, LOCAL 30..... (July) 846

Construction Industry - Jurisdictional Dispute - Sheet metal workers' union and Plumbers' union disputing assignment of work in connection with piping for dust control system - Board satisfied that work correctly assigned to Sheet metal workers' union

E.S. FOX LIMITED, UA, LOCAL UNION 508; RE ONTARIO SHEET METAL WORKERS' & ROOFERS' CONFERENCE, SMW, LOCAL 397..... (May) 549

Construction Industry - Jurisdictional Dispute - Sheetmetal workers' union and carpenters' union disputing assignment of work on wall system for housing project - Board finding that handling and installation of bitheruthene waterproofing membrane, z-bar and insulation at project in Thunder Bay properly assigned to sheetmetal workers

LAKEHEAD ROOFING AND SHEET METAL CO. (1983) LTD., CJA, LOCAL 1669; RE ONTARIO SHEET METAL WORKERS' & ROOFERS' CONFERENCE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 397..... (Mar.) 265

Construction Industry - Jurisdictional Dispute - Various unions, including Labourers' union, disputing assignment of certain clean up and "housekeeping" work on construction sites in Oakville and Toronto - Board distinguishing between removal, daily clean up, periodic general clean up and final clean up and between trade materials and debris - Board directing



that all future clean up work on job sites in question be assigned in accordance with its direction

ELLIS DON LTD., GROFF AND ASSOCIATES LTD., AND THE STATE GROUP LTD., LIUNA, LOCAL 506; RE UA, LOCAL 46 AND IBEW, LOCAL 353; RE UA, LOCAL 853, HFIA, LOCAL 95..... (Sept.)

1222

Construction Industry - Related Employer - Unfair Labour Practice - Construction company violating Act by incorporating new company in order to enter into agreement with Labourers' union with respect to employees who, absent the incorporation, would have been represented by Bricklayers' union - Bricklayers seeking related employer declaration in respect of a number of construction contractors - Board issuing declaration in respect of three of the companies, but not in respect of fourth company - Board exercising its discretion against making declaration where its effect would be tantamount to a revocation of Labourers' certificate with respect to fourth company

BAYRITZ CONSTRUCTION LTD. AND BAYRITZ MASONRY LTD. AND DAKOTA MASONRY LTD. AND 986153 ONTARIO LTD. C.O.B. AS YELLOW BRICK MASONRY AND SUNDIAL BRICKLAYERS INC.; RE BAC; RE LIUNA, LOCAL 183..... (Oct.)

1283

Construction Industry - Related Employer - Board finding that statutory preconditions established by section 1(4) of the Act met - Fact that only a portion of related employer's work would potentially fall under ICI agreement not a factor causing Board to exercise discretion against making single employer declaration - Board unable to determine, based on evidence and argument before it, whether ICI agreement applying to work performed in related employer's shop - Board applying *Metroland Printing* case - Board issuing related employer declaration in order to preserve applicant union's ability to claim work and ensure that, if disputed, the issue will be dealt with by Board of Arbitration

DUFFY MECHANICAL CONTRACTORS LIMITED, DURASYSTEMS BARRIERS INC.; RE SMW, LOCAL 30.....(Aug.)

992

Construction Industry - Sale of a Business - Applicant union submitting that certain alleged "key persons" were so essential to business of "predecessor" that their departure to form new "successor" company constitution sale of business within meaning of section 64 of the Act - Board finding that alleged "key persons" not in fact "key" to business of "predecessor" - Applications dismissed

MERIT CONTRACTORS OF NIAGARA, STEWART & HINAN CONTRACTORS LIMITED, STUCOR CONSTRUCTION LTD., DAVID J. HARVEY, DENNIS R. KOWALCHUK AND VERNON R. THORPE C.O.B. AS; RE CJA, LOCAL 18 .. (Feb.)

152

Construction Industry - Sale of a Business - Predecessor company operating as general contractor in school construction field in ICI sector - Officers and shareholders of predecessor leaving company to set up new company and entering very same market as predecessor - Applicant delaying six or seven years in bringing application - Board finding sale of a business - Application allowed

AQUICON CONSTRUCTION CO. LTD., BONDFIELD CONSTRUCTION COMPANY (1983) LIMITED AND 352021 ONTARIO LIMITED; RE L.I.U.N.A., LOCAL 837..... (Dec.)

1611

Construction Industry - Sale of a Business - Related Employer - Board not accepting union's characterization of certain individual as "key man" during relevant period - Two and one half years separating departure of alleged "key man" from company A and his joining company

B - Company A continuing to grow and prosper following departure of alleged "key man" - Sale of a business and related employer applications dismissed

TRI-CORPS INDUSTRIAL CONTRACTORS, INDUSTRIAL LABOUR CORPS. INC., SCOTRON HOLDINGS INC., CHRISTMAN & LEITCH CONTRACTORS LTD., CHRISTMAN & ASSOCIATES CONTRACTORS LTD.; RE THE MILL-WRIGHT DISTRICT COUNCIL OF ONTARIO ON ITS OWN BEHALF AND ON BEHALF OF LOCAL 1916..... (Oct.)

1446

Construction Industry Grievance - Abandonment - Accreditation - Bargaining Rights - Collective Agreement - Construction Industry - Employer Support - Judicial Review - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractors Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Respondent applying for judicial review on ground that full Board meeting violated rules of natural justice and seeking interim relief - Motions Court judge granting order compelling attendance of chair, vice-chair and registrar before special examiner to obtain information respecting Board procedures - Motion to produce various reports and documents dismissed - Full panel of Divisional Court allowing appeal and setting aside order of motions court judge

ELLIS-DON LIMITED; RE THE ONTARIO LABOUR RELATIONS BOARD AND IBEW, LOCAL 894..... (Jan.)

113

Construction Industry Grievance - Abandonment - Accreditation - Bargaining Rights - Collective Agreement - Construction Industry - Employer Support - Judicial Review - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractors Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Respondent applying for judicial review on ground that full Board meeting violated rules of natural justice and seeking interim relief - Motions Court judge granting order compelling attendance of chair, vice-chair and registrar before special examiner to obtain information respecting Board procedures - Motion to produce various reports and documents dismissed - Full panel of Divisional Court allowing appeal and setting aside order of motions court judge - Court of Appeal dismissing motion for leave to appeal

ELLIS-DON LIMITED; THE OLRB AND IBEW, LOCAL 894..... (June)

801

Construction Industry Grievance - Abandonment - Bargaining - Construction Industry - Board not persuaded that period of inaction in roads sector between 1988 and 1992 sufficient to warrant finding of abandonment in that sector of bargaining rights granted in multi-sector certificate - Board setting out parties' submissions in respect of whether employer nevertheless bound by "cross-over" clause in collective agreement negotiated by accredited employer organization - Employer arguing that employer association had no right to bargain beyond sector for which it was accredited, at least for non-members - Accredited

employer organization given ten working days to indicate whether it wishes to make representations in connection with "cross-over" clause issue

ELIRPA CONSTRUCTION AND MATERIALS LIMITED; RE IUOE, LOCAL 793 ..... (Apr.) 372

Construction Industry Grievance - Abandonment - Bargaining Rights - Construction Industry - Road building contractor entering into voluntary recognition agreement with union in August 1990 - Employer applying collective agreement until September 1991 when it returned to operating as non-union contractor - Union grieving non-compliance with agreement in November 1992 - Board rejecting employer's submission that grievance not arbitrable on basis that union had abandoned bargaining rights

ASSOCIATED CONTRACTING INC.; RE IUOE, LOCAL 793 ..... (Aug.) 951

Construction Industry Grievance - Abandonment - Construction Industry - Employer alleging abandonment of bargaining rights in context of union's grievance referral - Board denying union's preliminary objections to effect that issue of abandonment *res judicata* and that employer could not establish *prima facie* case

ASSOCIATED CONTRACTING INC.; RE IUOE, LOCAL 793 ..... (Mar.) 197

Construction Industry Grievance - Adjournment - Construction Industry - Jurisdictional Dispute - Parties - Practice and Procedure - Board rejecting employer's motion that Board defer consideration of grievance to allow it to file jurisdictional dispute complaint - Board noting that parties had not addressed whether employer's unrepresented labourers, Labourers' union, or other contractors have status to intervene in the proceeding

SARNIA WOLVERINE MANUFACTURING LTD.; RE UA, LOCAL UNION 663 ..... (Jan.) 68

Construction Industry Grievance - Adjournment - Construction Industry - Jurisdictional Dispute - Practice and Procedure - Ironworkers' union grieving failure to assign its members certain work - Millwrights' union seeking to intervene - Millwrights' submitting that grievance inarbitrable because Ironworkers' asking Board to enforce order made in *The State Group* case and because dispute raised in grievance is jurisdictional dispute - Board adjourning section 126 proceeding pending filing and disposition of jurisdictional dispute complaint under section 93 of the *Act*

E.S. FOX LIMITED, ONTARIO ERECTORS ASSOCIATION INCORPORATED; RE BSOIW, LOCAL 700; RE MILLWRIGHTS DISTRICT COUNCIL OF ONTARIO ON ITS OWN BEHALF AND ON BEHALF OF ITS LOCAL 1244 ..... (May) 543

Construction Industry Grievance - Constitutional Law - Construction Industry - Judicial Review - Board dismissing employer's submission that construction of banks by bank employees within sphere of federal labour relations - Board assuming jurisdiction to deal with grievance - Bank seeking judicial review - Divisional Court finding construction of new bank building to be ordinary construction activity and within provincial jurisdiction - Judicial review application dismissed - Motion for leave to appeal dismissed by Court of Appeal - Application for leave to appeal to Supreme Court of Canada dismissed

TORONTO-DOMINION BANK, THE; RE CJA, LOCAL 785, ONTARIO LABOUR RELATIONS BOARD, ATTORNEY GENERAL OF CANADA AND ATTORNEY GENERAL OF ONTARIO ..... (Jan.) 127

Construction Industry Grievance - Construction Industry - Board applying *Great Lakes Fabricating* case and finding employer member of Sarnia Construction Association bound by province-wide ICI Labourers' collective agreement - Board finding union estopped from



asserting its collective agreement rights in respect of any contract bid on or project commenced prior to date of Board's decision

ALUMA SYSTEMS CANADA INC.; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL ON BEHALF OF ITS AFFILIATED LOCAL UNIONS 183, 247, 491, 493, 506, 527, 597, 607, 625, 837, 1036, 1059, 1081 AND 1089; RE CARPENTERS AND ALLIED WORKERS LOCAL 27, CJA LOCAL 18.....(Nov.) 1469

Construction Industry Grievance - Construction Industry - Board determining that certain water lancing work performed on steam generators located within Hydro nuclear power facility not falling within terms of collective agreement between EPSCA and Boilermakers' union  
BABCOCK & WILCOX, INTERNATIONAL DIVISION; RE BBF, LODGE 128.(Mar.) 199

Construction Industry Grievance - Construction Industry - Board determining that employer who is not member of accredited employer association is not bound by agreement made by association for other than geographic area and sector for which it is accredited - Board finding that cross-over clause of sewer and watermain collective agreement not applicable to responding employer in road building sector  
ELIRPA CONSTRUCTION AND MATERIALS LIMITED; RE IUOE, LOCAL 793; RE METROPOLITAN TORONTO SEWER AND WATERMAIN CONTRACTORS ASSOCIATION .....(July) 838

Construction Industry Grievance - Construction Industry - Board finding and declaring that employer discriminated against union steward and violated collective agreement by failing to offer him opportunity to work overtime on specified date - Grievance allowed  
B & D INSULATION INC.; RE HFIA, LOCAL 95.....(Dec.) 1625

Construction Industry Grievance - Construction Industry - Board finding that certain landfill operations work not work within the construction industry - Grievance dismissed  
ROBERT HUME CONSTRUCTION LTD.; IUOE AND ITS LOCAL 793 .....(Sept.) 1248

Construction Industry Grievance - Construction Industry - Board finding that collective agreement requires employer to pay \$70 travel allowance, regardless of whether or not an employee who works a day in "zone" incurs accommodation expense on night following work assignment - Grievances allowed  
MONTGOMERY KONE ELEVATOR CO.; RE IUEC, LOCAL 50 .....(Apr.) 462

Construction Industry Grievance - Construction Industry - Damages - Reconsideration - Remedies - Board earlier refusing to enforce 120 per cent interest rate set out in collective agreement - Union's reconsideration application dismissed  
BAIRRADA MASONRY INC.; LIUNA, LOCAL 183 .....(Mar.) 204

Construction Industry Grievance - Construction Industry - Damages - Remedies - Board earlier finding employer in violation of collective agreement in failing to subcontract certain work to company in contractual relations with Labourers' union - Parties failing to agree on whether damages owing - Board not accepting employer's assertion that, in order to prove entitlement to damages, union must prove that employer or union subcontractor had same equipment, expertise and supervisory capacity actually supplied by subcontractor used by employer - Union here showing that it had members available to perform contracted work and that it was within capability of union contractors or of the employer to perform work described in contract documents - Board satisfied that union proving its entitlement to compensation  
ELLIS-DON LIMITED; RE LIUNA, LOCAL 1036 AND LIUNA ONTARIO PROVINCIAL DISTRICT COUNCIL .....(Apr.) 386

- Construction Industry Grievance - Construction Industry - Damages - Remedies - Union seeking damages for wages owing against corporate employer and against corporate director in his personal capacity - Union relying on Ontario *Business Corporations Act (OBCA)* and *Employment Standards Act* in respect of order against director - Board concluding that Board without jurisdiction to enforce provisions of *OBCA* or *ESA* as if it were either a civil court in which a civil action had been commenced, or an employment standards officer making an order under the *ESA* - Board quantifying damages and making order against employer only
- SPENCER CONSTRUCTION COMPANY LTD. AND IAN SPENCER; RE CJA, LOCAL 2041..... (Feb.) 181
- Construction Industry Grievance - Construction Industry - Discharge - Employer seeking to assign mechanic's work to "Helper" following completion of apprenticeship - Union refusing to issue "mechanic's card" - Employer advising grievor that if he did not work as "mechanic" he would be deemed to have quit - Board finding that employer's request that grievor work as mechanic without union referral violating collective agreement - Board concluding that grievor did not resign, but was discharged without just cause - Grievance allowed
- OTIS CANADA, INC., NATIONAL ELEVATOR AND EXCALATOR ASSOC.; RE IUEC LOCAL 50..... (Apr.) 469
- Construction Industry Grievance - Construction Industry - Discharge - Timeliness - Practice and Procedure - Unfair Labour Practice - Board declining to dismiss grievances as untimely - Board declining to defer hearing of grievances until unfair labour practice complaint heard or until appeal to international union resolved
- DIXIE ELEVATOR LTD.; RE IUEC, LOCAL 50 ..... (May) 539
- Construction Industry Grievance - Construction Industry - Judicial Review - Settlement - Labour-Management Relations Committee hearing grievance at Step 3 of grievance procedure and issuing decision - Union submitting that matter in dispute thereby settled pursuant to grievance procedure set out in collective agreement - Board upholding union's preliminary motion, concluding that grievance settled, and directing employer to comply with terms of settlement - Employer's application for judicial review dismissed by Divisional Court
- E.S. FOX LIMITED; RE MILLWRIGHT DISTRICT COUNCIL OF ONTARIO ON ITS OWN BEHALF AND ON BEHALF OF ITS LOCAL 1007 AND OLRB ..... (Nov.) 1609
- Construction Industry Grievance - Construction Industry - Municipal employer and union disputing interpretation of subcontracting provision inserted into collective agreement by arbitration board - City asserting that subcontracting provision only applying to transfers of work where City initially itself acquired contractual obligation to perform work - Union asserting that subcontracting provision applying whenever City having it within its power to pass on "down the chain" obligation to do construction work - Both interpretations rejected by Board - Board finding that arbitration board intended to distinguish between "prime" contracts and "subcontracts" and that collective agreement restricting subcontracting, but not restricting letting of prime contracts - Five grievances dismissed and one allowed
- THE CORPORATION OF THE CITY OF SAULT STE. MARIE; RE LIUNA, LOCAL 1036..... (Apr.) 496
- Construction Industry Grievance - Construction Industry - Practice and Procedure - Reconsideration - Employer failing to attend Board hearing and seeking to have Board reconsider decision making various orders and declarations - Employer claiming that union official represented that Board hearing scheduled for 2:30 p.m. and not 9:30 a.m. as indicated in Board's Notice of Hearing - Board finding that party who fails to check Notice of Hearing and

chooses to rely on recollection or representation of others does so at its own risk - Reconsideration application dismissed

JOHN MAGGIO EXCAVATING LTD.; RE IUOE, LOCAL 793 .....(Jan.) 31

Construction Industry Grievance - Construction Industry - Practice and Procedure - Remedies - Whether certain job site in Kemptville falling within geographic area assigned to Labourers' union Local 247 under collective agreement - Board applying *M. Sullivan & Son* case and concluding that, under provincial agreement, no local union having exclusive jurisdiction over Kemptville - Employer not violating collective agreement when it hired from Local 527 rather than Local 247 - Grievance dismissed - Employer seeking costs - Board analyzing costs issue in detail and concluding that in section 126 proceedings, in absence of specific provision in collective agreement, Board has no jurisdiction to award legal costs as such - Board, however, directing Local 247 to reimburse employer for its share of section 126(4) expenses

BELLAI BROTHERS LTD.; RE LIUNA, LOCAL 247; RE LIUNA, LOCAL 527 .(Jan.) 2

Construction Industry Grievance - Construction Industry - Related Employer - Carpenters' union alleging that hotel and construction manager for hotel construction project constituting one employer for purposes of the *Act* - Union also grieving alleged violation of construction management provision of Carpenters' provincial agreement - Board finding that construction management provision of collective agreement contravened when bids solicited from non-union contractors for foundation work, but in no other respect - Board applying *Dalton* case and declining to exercise discretion under section 1(4) of the *Act* where contravention of construction management clause arising out of circumstances where construction manager did not acquire any right or obligation over work covered by agreement

MAATEN CONSTRUCTION LIMITED; 865541 ONTARIO INC.; RE CJA, LOCAL 1256.....(Apr.) 438

Construction Industry Grievance - Construction Industry - Sale of a Business - Related Employer - Board finding successor's owner to be quintessential "key person" and finding sale of a business under section 64 of the *Act* - Board also making related employer declaration under section 1(4) of the *Act*

STEELES ELECTRIC, ELI'S ELECTRIC SERVICE, TOWN AND COUNTRY ELECTRIC LTD., TOWN AND COUNTRY ELECTRIC, STEELES ELECTRIC, E & E STEELES ELECTRIC LTD. C.O.B. AS E & E STEELES ELECTRIC C.O.B. AS; RE IBEW, LOCAL 353.....(May) 603

Construction Industry Grievance - Construction Industry - Trade Union - Labourers' union alleging that MTABA breaching subcontracting provision of collective agreement - Subcontracting provision effective only if Labourers' Local 183 and Bricklayers' Local 1 form "common union" by specified date - Board satisfied that "common union" not formed - Grievance dismissed

METROPOLITAN TORONTO APARTMENT BUILDERS' ASSOCIATION; RE LIUNA, LOCAL 183.....(Nov.) 1568

Construction Industry Grievance - Construction Industry - Union alleging that lay-off violating provincial agreement and/or that employer acting in bad faith - Board finding that collective agreement requiring employee to maintain employment with one employer for one full period of six months or more before industry-wide seniority can be relied on by employee - Grievor accordingly unable to utilize his industry-wide seniority rights with the particular employer - Evidence not supporting conclusion that employer acting in bad faith - Grievance dismissed

DOVER CORPORATION (CANADA) LTD.; RE IUEC LOCAL 90 .....(Sept.) 1208



Construction Industry Grievance - Discharge - Construction Industry - Employer's decision to remove grievor's seniority made contrary to collective agreement requiring written notice by registered mail to return to work - Grievor subsequently incorrectly laid off - Grievance allowed - Reinstatement with compensation ordered

CHICAGO BLOWER, DIVISION OF EARLSCOURT METAL; RE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 30..... (June)

645

Continuation of Benefits - Practice and Procedure - Unfair Labour Practice - Reconsideration - Strike - Board determining that under section 81.1 of the *Act*, union entitled to tender payments for selected benefits - Employer directed to provide union with information respecting amounts necessary to continue benefits selected by union - Employer applying for reconsideration on ground that Board without jurisdiction to make its production order and on ground that Board was required to first determine whether union had tendered any payment before making any order or direction - Reconsideration application dismissed

PARTEK INSULATIONS LTD.; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 456..... (Feb.)

167

*Crown Employees Collective Bargaining Act* - Certification - Termination - Rival union seeking to terminate incumbent union's bargaining rights for certain "enforcement officers" employed by Crown agency covered by *Crown Employees Collective Bargaining Act, 1993* (Bill 117) and/or applying to be certified to represent those employees - Parties disputing effect of transition provisions in Bill 117 - Board concluding that Labour Relations Board (and not Ontario Public Service Labour Relations Tribunal) having jurisdiction to determine the applications and that provisions of "old" *Crown Employees Collective Bargaining Act* applying to the applications

TORONTO AREA TRANSIT OPERATING AUTHORITY; RE ASSOCIATION OF GO TRANSIT ENFORCEMENT OFFICERS; RE AMALGAMATED TRANSIT UNION, LOCAL 1587..... (July)

943

*Crown Employees Collective Bargaining Act* - Change in Working Conditions - Interim Relief - Remedies - Unfair Labour Practice - Union alleging that employers violating statutory freeze by altering employees' pension plan and seeking interim relief pending disposition of complaint - Employers submitting that Board should not grant interim relief which is tantamount to final disposition of main complaint - Board not agreeing that interim relief never appropriate in such circumstances - Board satisfied that balance of harm favouring union and that interim relief should be granted - Board directing employers to provide bargaining unit employees with pension plan equivalent to Public Service Pension Plan pending disposition of unfair labour practice complaint

BEEF IMPROVEMENT ONTARIO INCORPORATED, THE CROWN IN RIGHT OF ONTARIO (AS REPRESENTED BY THE ONTARIO MINISTRY OF AGRICULTURE AND FOOD) AND ONTARIO SWINE IMPROVEMENT ONTARIO INCORPORATED AND; RE OPSEU; RE GROUP OF EMPLOYEES..... (Apr.)

341

*Crown Transfer* - Abandonment - Bargaining Rights - Sale of a Business - Ministry of Health revoking nursing home's licence, taking over nursing home and operating it for 3 years - Ministry of Health calling for and receiving proposals for licensed beds lost due to earlier revocation and awarding beds to a number of licensees, including "HG" - Board finding that part of Crown undertaking had been transferred to "HG", that there were valid bargaining rights to be transferred and that an intermingling of employees had occurred - Board finding that predecessor's collective agreement would have applied at time "HG" started combined operation in 1991 without a vote had *Crown Transfer Act* been applied as

it should have been - Evidence not supporting submission that union had abandoned its bargaining rights - Application under *Crown Transfer Act* allowed

HERITAGE GREEN SENIOR CENTRE, SAINT ELIZABETH HOME SOCIETY,  
ONTARIO MINISTRY OF HEALTH AND; RE SEIU, LOCAL 532 ..... (Apr.) 419

Crown Transfer - Bargaining Rights - Judicial Review - Ministry of Correctional Services contracting with several community organizations to provide various services to inmates including discharge planning, cultural liaison, and counselling - Whether each contract constituting transfer of part of Crown's "undertaking" to the community agency - Board not persuaded that the right to perform particular services created by subcontract is "part" of Crown's "undertaking" to which bargaining rights attach or which create successor ship on execution of contract - Crown transfer application dismissed by Board - Divisional Court dismissing union's application for judicial review

ST. LEONARD'S SOCIETY OF METROPOLITAN TORONTO AND COMMUNITY  
LIAISON SERVICES AND BLACK INMATES AND FRIENDS ASSEMBLY, THE  
CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF  
CORRECTIONAL SERVICES AND; RE OPSEU ..... (Jan.) 126

Damages - Construction Industry - Construction Industry Grievance - Reconsideration - Remedies - Board earlier refusing to enforce 120 per cent interest rate set out in collective agreement - Union's reconsideration application dismissed

BAIRRADA MASONRY INC.; LIUNA, LOCAL 183 ..... (Mar.) 204

Damages - Construction Industry - Construction Industry Grievance - Remedies - Board earlier finding employer in violation of collective agreement in failing to subcontract certain work to company in contractual relations with Labourers' union - Parties failing to agree on whether damages owing - Board not accepting employer's assertion that, in order to prove entitlement to damages, union must prove that employer or union subcontractor had same equipment, expertise and supervisory capacity actually supplied by subcontractor used by employer - Union here showing that it had members available to perform contracted work and that it was within capability of union contractors or of the employer to perform work described in contract documents - Board satisfied that union proving its entitlement to compensation

ELLIS-DON LIMITED; RE LIUNA, LOCAL 1036 AND LIUNA ONTARIO PROVINCIAL DISTRICT COUNCIL ..... (Apr.) 386

Damages - Construction Industry - Construction Industry Grievance - Remedies - Union seeking damages for wages owing against corporate employer and against corporate director in his personal capacity - Union relying on Ontario *Business Corporations Act (OBCA)* and *Employment Standards Act* in respect of order against director - Board concluding that Board without jurisdiction to enforce provisions of *OBCA* or *ESA* as if it were either a civil court in which a civil action had been commenced, or an employment standards officer making an order under the *ESA* - Board quantifying damages and making order against employer only

SPENCER CONSTRUCTION COMPANY LTD. AND IAN SPENCER; RE CJA,  
LOCAL 2041..... (Feb.) 181

Discharge - Certification - Certification Where Act Contravened - Change in Working Conditions - Discharge for Union Activity - Interference in Trade Unions - Unfair Labour Practice - Board finding that company did not violate Act in discharging union supporter or three managers, and that a number of other allegations not established - Employer violating Act in telling employee that he could not solicit for union on company property, promising to clear discipline records, removing last names from work schedules and time cards and offering Christmas bonus to employees as inducement to avoid dealing with union and thus

interfering with union's organizing drive - Board inviting submissions on whether it ought to determine application under "old" section 8 of the Act before hearing adjourned unfair labour practice complaint - Board remaining seized as to all remedial matters

PRICE CLUB WESTMINSTER; PRICE CLUB ST. LAURENT INC. C.O.B. AS; RE UFCW, LOCAL 175 .....(Aug.)

1029

Discharge - Certification - Certification Where Act Contravened - Construction Industry - Discharge for Union Activity - Interference in Trade Unions - Intimidation and Coercion - Remedies - Unfair Labour Practice - Employer violating Act in threatening and intimidating one employee with respect to union membership and in laying off second employee because of his union activity - Reinstatement with compensation ordered - Board determining that as result of employer's violations true wishes of employees unlikely to be ascertained - Union certified under section 9.2 of the Act

BASILE INTERIORS LTD.; RE PAT, LOCAL 1494 .....(Aug.)

963

Discharge - Change in Working Conditions - Discharge for Union Activity - *Hospital Labour Disputes Arbitration Act*- Interim Relief - Remedies - Settlement - Unfair Labour Practice - Union certified three years earlier and still without first collective agreement - Union making unfair labour practice complaint in respect of work reorganization ("alternative placement") and lay-offs affecting one-half of the bargaining unit - Union alleging that employer's conduct motivated by anti-union *animus*, breaching statutory freeze and violating minutes of settlement of earlier complaint - Union seeking interim order preserving *status quo* pending disposition of unfair labour practice complaint or until interest arbitration award issued - Employer implementing impugned changes after notice of union's interim relief application, but before Board hearing - Board concluding that balance of harm weighing in favour making interim order - Employer directed to restore and maintain *status quo* with respect to bargaining unit jobs pending disposition of union's complaint

THE MISSISSAUGA HOSPITAL; RE THE PRACTICAL NURSES FEDERATION OF ONTARIO ..... (July)

934

Discharge - Change in Working in Conditions - Discharge for Union Activity - Interim Relief - Remedies - Unfair Labour Practice - Union filing unfair labour practice complaint in respect of employee's discharge and in respect of work reorganization and second employee's demotion alleged to violate statutory freeze - Union seeking interim relief pending determination of complaint - Board declining to order reinstatement of discharged employee but directing employer to continue or restore second employee's terms and conditions of employment on interim basis

OMBUDSMAN ONTARIO; RE OPEIU, LOCAL 343 .....(July)

885

Discharge - Construction Industry - Construction Industry Grievance - Employer seeking to assign mechanic's work to "Helper" following completion of apprenticeship - Union refusing to issue "mechanic's card" - Employer advising grievor that if he did not work as "mechanic" he would be deemed to have quit - Board finding that employer's request that grievor work as mechanic without union referral violating collective agreement - Board concluding that grievor did not resign, but was discharged without just cause - Grievance allowed

OTIS CANADA, INC., NATIONAL ELEVATOR AND EXCALATOR ASSOC.; RE IUEC LOCAL 50 .....(Apr.)

469

Discharge - Construction Industry - Construction Industry Grievance - Employer's decision to remove grievor's seniority made contrary to collective agreement requiring written notice



by registered mail to return to work - Grievor subsequently incorrectly laid off - Grievance allowed - Reinstatement with compensation ordered

CHICAGO BLOWER, DIVISION OF EARLSCOURT METAL; RE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 30..... (June) 645

Discharge - Construction Industry - Construction Industry Grievance - Timeliness - Practice and Procedure - Unfair Labour Practice - Board declining to dismiss grievances as untimely - Board declining to defer hearing of grievances until unfair labour practice complaint heard or until appeal to international union resolved

DIXIE ELEVATOR LTD.; RE IUEC, LOCAL 50 ..... (May) 539

Discharge - Construction Industry - Discharge for Union Activity - Practice and Procedure - Unfair Labour Practice - Board finding union's 8 1/2 month delay in bringing application undue and without justification - Application dismissed

EASTERN WELDING, 655270 ONTARIO INC. C.O.B. AS; RE UA, LOCAL UNION 819 ..... (June) 673

Discharge - Construction Industry - Discharge for Union Activity - Unfair Labour Practice - Board finding lay-offs of five fitters related to union's certification application and therefore improper - Application allowed

EASTERN POWER DEVELOPERS CORP.; RE UA, LOCAL UNION 46 ..... (Dec.) 1651

Discharge - Construction Industry - Duty of Fair Referral - Duty of Fair Representation - Intimidation and Coercion - Practice and Procedure - Unfair Labour Practice - Board dismissing objection to vice-chair sitting alone in this case - Applicant complaining of threats related to his participation in Board proceeding, union charges laid against the applicant, the refusal to permit the applicant to lay union charges against a fellow member, the failure to refer the applicant to work on certain project, the union's failure to assist him with certain grievances, his discharge, and being struck from the hiring hall referral list because of his improper expulsion from the union - Responding parties asking Board to dismiss application on grounds of undue delay - Board considering effect of delay in construction industry - Board dismissing all aspects of complaint for delay, except for allegation concerning removal of applicant from hiring hall list - Nine month delay in respect of referral issue not so long as to cause Board to decline to hear complaint

ROBERT DUMEAH; RE BSOIW LOCAL 700, K.E.W. STEEL FABRICATORS LTD. .... (June) 655

Discharge - Discharge for Union Activity - Interim Relief - Practice and Procedure - Remedies - Unfair Labour Practice - Board discussing importance of filing full and complete declarations in applications for interim relief - Board directing that two of three discharged employees be reinstated pending determination of unfair labour practice complaint - Board determining that balance of harm weighing in employer's favour in respect of third discharged employee

SHIRLON PLASTICS INC.; RE UFCW, AFL/CIO, CLC ..... (Aug.) 1086

Discharge - Discharge for Union Activity - Interim Relief - Remedies - Board reinstating discharged resident superintendents on interim basis pending disposition of unfair labour practice complaint - Board clarifying that interim reinstatement involving both previous benefits of employment (including residence) and obligations

SHELTER CANADIAN PROPERTIES LIMITED; RE USWA ..... (Apr.) 482

Discharge - Discharge for Union Activity - Interim Relief - Remedies - Trade Union - Trade Union Status - Employees discharged after signing letter setting out dissatisfaction with working conditions and asking employer to recognize them in representative capacity -

- Employees filing unfair labour practice complaint and seeking interim reinstatement - Employer asking Board to dismiss interim relief application and unfair labour practice complaint on ground that employees not engaged in trade union activity - Board satisfied that arguable case made out that employees attempting to establish association that might have acquired characteristics of "trade union" under the *Act* and that terminations motivated, at least in part, by their participation in effort to negotiate collectively with their employer - Balance of harm favouring granting relief - Interim reinstatement ordered
- MINIWORLD MANAGEMENT, OPERATING AS NORTH YORK INFANT NURSERY AND PRESCHOOL; RE MADELENE ALAGANO, CATALINA ALVAREZ, ELIZABETH ARAUJO, ELEN BUCKLEY, SUZANNA CABRAL AND SUSAN CHISLETT ..... (Apr.) 455
- Discharge - Discharge for Union Activity - Interim Relief - Remedies - Unfair Labour Practice - Board directing employer to provide work to its employees equivalent to number of hours provided when operating two full shifts until Board determining if lay-off of 23 employees legitimate
- EARNWAY INDUSTRIES (CANADA) LTD.; RE IWA CANADA ..... (Nov.) 1511
- Discharge - Discharge for Union Activity - Interim Relief - Remedies - Unfair Labour Practice - Board directing interim reinstatement of employee discharged during union organizing campaign
- COOPER INDUSTRIES (CANADA) INC.; RE USWA ..... (Mar.) 225
- Discharge - Discharge for Union Activity - Interim Relief - Remedies - Unfair Labour Practice - Union filing complaint in respect of discharge of inside organizer and seeking interim reinstatement - Board not regarding three week delay in bringing application as substantial - Balance of harm weighing in union's favour - Board directing that employee be reinstated pending determination of complaint and that Board notice be posted in workplace
- INTERCON SECURITY LIMITED; RE COMMUNICATION, ENERGY AND PAPERWORKERS UNION OF CANADA ..... (Sept.) 1228
- Discharge - Discharge for Union Activity - Practice and Procedure - Unfair Labour Practice - Union filing unfair labour practice complaint under section 92.2 of the *Act* - Employer failing to reply to union's application, but attending at Board on day of hearing - Board not permitting employer additional time to file response - Board determining matter solely on materials filed by applicant - Application allowed and reinstatement with compensation ordered
- TRICAN MATERIALS LTD. AND DUNHILL CONTRACTING LTD.; RE TEAMSTERS UNION LOCAL NO. 880 ..... (Dec.) 1703
- Discharge - Discharge for Union Activity - Unfair Labour Practice - Discharged employees reinstated by different Board panel on interim basis pending determination of unfair labour practice complaint - At hearing on merits of unfair labour practice complaint, union also complaining about manner of interim reinstatement - Board finding employer in violation of the *Act* in respect of interim reinstatement by reinstating grievors to night shift and to job mix that was not reflective of range of duties normally performed - In respect of main complaint, Board finding employees' discharges tainted by anti-union *animus* and directing permanent reinstatement with compensation
- TATE ANDALE CANADA INC.; RE USWA ..... (June) 781
- Discharge - Duty of Fair Representation - Unfair Labour Practice - Employee complaining about union's failure to advance his grievance to arbitration - Board noting that employee's complaint premature and that fact that a grievance does not go to arbitration does not, in itself,

establish any arguable breach of the Act - Board exercising its discretion not to inquire into complaint - Complaint dismissed

GEORGE LEE; RE LOCAL 75, UNION REPRESENTATIVE CLEDWYN LONGE .....(Aug.) 1009

Discharge - Health and Safety - Applicant alleging that he was discharged, contrary to *Occupational Health and Safety Act*, as reprisal for having made certain complaints about availability of gloves at his workplace and/or because he had developed dermatitis as result of performing work without gloves - Employer affirmatively establishing that applicant terminated for reasons unrelated to health and safety matters - Application dismissed

PRECISION ENGINEERING COMPANY DIVISION OF PECO TOOL AND DIE LTD.; RE MARK DESIPIO ..... (May) 596

Discharge - Health and Safety - Applicant employed as office cleaner suffering from thyroid condition - Employer requiring its employees to wear uniform including bow-tie tied around neck - Applicant's thyroid condition aggravated by anything around her neck - Employer suspending applicant for wearing bow-tie at third button of her blouse - Board concluding that applicant honestly and reasonably refused to wear item of clothing in manner she believed would endanger her health - *Occupational Health and Safety Act* applying in circumstances where health and safety risk identified by worker is risk to her as a result of disability - Employer directed to reinstate applicant to former position with full compensation and to permit applicant to wear bow-tie clipped at third button of uniform

HURLEY CORPORATION; RE MARIA RAPOSO .....(Aug.) 1002

Discharge - Health and Safety - Employer not satisfying Board, on balance of probabilities, that complainant's health and safety activities not at least part of reason for his discharge - Complainant subsequently finding new employment and not seeking reinstatement - Complaint allowed - Damages ordered

MLG ENTERPRISES LIMITED; RE JASON JAMES .....(Nov.) 1550

Discharge - Just Cause - Unfair Labour Practice - Board finding that some discipline warranted for employee's carelessness, but that other allegations not made out on the evidence - Employer found to have disciplined and discharged employee without just cause contrary to section 81.2 of the Act - Written warning substituted for discharge and for various other disciplinary notations - Reinstatement with compensation ordered - Application allowed

OMBUDSMAN ONTARIO; RE OPEIU, LOCAL 343 .....(Dec.) 1679

Discharge for Union Activity - Certification - Certification Where Act Contravened - Change in Working Conditions - Discharge - Interference in Trade Unions - Unfair Labour Practice - Board finding that company did not violate Act in discharging union supporter or three managers, and that a number of other allegations not established - Employer violating Act in telling employee that he could not solicit for union on company property, promising to clear discipline records, removing last names from work schedules and time cards and offering Christmas bonus to employees as inducement to avoid dealing with union and thus interfering with union's organizing drive - Board inviting submissions on whether it ought to determine application under "old" section 8 of the Act before hearing adjourned unfair labour practice complaint - Board remaining seized as to all remedial matters

PRICE CLUB WESTMINSTER; PRICE CLUB ST. LAURENT INC. C.O.B. AS; RE UFCW, LOCAL 175.....(Aug.) 1029

Discharge for Union Activity - Certification - Certification Where Act Contravened - Construction Industry - Discharge - Interference in Trade Unions - Intimidation and Coercion - Remedies - Unfair Labour Practice - Employer violating Act in threatening and intimidating one employee with respect to union membership and in laying off second employee



because of his union activity - Reinstatement with compensation ordered - Board determining that as result of employer's violations true wishes of employees unlikely to be ascertained - Union certified under section 9.2 of the Act

BASILE INTERIORS LTD.; RE PAT, LOCAL 1494 .....(Aug.) 963

Discharge for Union Activity - Change in Working Conditions - Discharge - *Hospital Labour Disputes Arbitration Act*- Interim Relief - Remedies - Settlement - Unfair Labour Practice - Union certified three years earlier and still without first collective agreement - Union making unfair labour practice complaint in respect of work reorganization ("alternative placement") and lay-offs affecting one-half of the bargaining unit - Union alleging that employer's conduct motivated by anti-union *animus*, breaching statutory freeze and violating minutes of settlement of earlier complaint - Union seeking interim order preserving *status quo* pending disposition of unfair labour practice complaint or until interest arbitration award issued - Employer implementing impugned changes after notice of union's interim relief application, but before Board hearing - Board concluding that balance of harm weighing in favour making interim order - Employer directed to restore and maintain *status quo* with respect to bargaining unit jobs pending disposition of union's complaint

THE MISSISSAUGA HOSPITAL; RE THE PRACTICAL NURSES FEDERATION OF ONTARIO ..... (July) 934

Discharge for Union Activity - Change in Working in Conditions - Discharge - Interim Relief - Remedies - Unfair Labour Practice - Union filing unfair labour practice complaint in respect of employee's discharge and in respect of work reorganization and second employee's demotion alleged to violate statutory freeze - Union seeking interim relief pending determination of complaint - Board declining to order reinstatement of discharged employee but directing employer to continue or restore second employee's terms and conditions of employment on interim basis

OMBUDSMAN ONTARIO; RE OPEIU, LOCAL 343 ..... (July) 885

Discharge for Union Activity - Construction Industry - Discharge - Practice and Procedure - Unfair Labour Practice - Board finding union's 8 1/2 month delay in bringing application undue and without justification - Application dismissed

EASTERN WELDING, 655270 ONTARIO INC. C.O.B. AS; RE UA, LOCAL UNION 819 ..... (June) 673

Discharge for Union Activity - Construction Industry - Discharge - Unfair Labour Practice - Board finding lay-offs of five fitters related to union's certification application and therefore improper - Application allowed

EASTERN POWER DEVELOPERS CORP.; RE UA, LOCAL UNION 46 ..... (Dec.) 1651

Discharge for Union Activity - Discharge - Interim Relief - Practice and Procedure - Remedies - Unfair Labour Practice - Board discussing importance of filing full and complete declarations in applications for interim relief - Board directing that two of three discharged employees be reinstated pending determination of unfair labour practice complaint - Board determining that balance of harm weighing in employer's favour in respect of third discharged employee

SHIRLON PLASTICS INC.; RE UFCW, AFL/CIO, CLC .....(Aug.) 1086

Discharge for Union Activity - Discharge - Interim Relief - Remedies - Board reinstating discharged resident superintendents on interim basis pending disposition of unfair labour practice complaint - Board clarifying that interim reinstatement involving both previous benefits of employment (including residence) and obligations

SHELTER CANADIAN PROPERTIES LIMITED; RE USWA ..... (Apr.) 482

Discharge for Union Activity - Discharge - Interim Relief - Remedies - Trade Union - Trade Union Status - Employees discharged after signing letter setting out dissatisfaction with working conditions and asking employer to recognize them in representative capacity - Employees filing unfair labour practice complaint and seeking interim reinstatement - Employer asking Board to dismiss interim relief application and unfair labour practice complaint on ground that employees not engaged in trade union activity - Board satisfied that arguable case made out that employees attempting to establish association that might have acquired characteristics of "trade union" under the <i>Act</i> and that terminations motivated, at least in part, by their participation in effort to negotiate collectively with their employer - Balance of harm favouring granting relief - Interim reinstatement ordered	
MINIWORLD MANAGEMENT, OPERATING AS NORTH YORK INFANT NURSERY AND PRESCHOOL; RE MADELENE ALAGANO, CATALINA ALVAREZ, ELIZABETH ARAUJO, ELEN BUCKLEY, SUZANNA CABRAL AND SUSAN CHISLETT .....	(Apr.) 455
Discharge for Union Activity - Discharge - Interim Relief - Remedies - Unfair Labour Practice - Board directing employer to provide work to its employees equivalent to number of hours provided when operating two full shifts until Board determining if lay-off of 23 employees legitimate	
EARNWAY INDUSTRIES (CANADA) LTD.; RE IWA CANADA .....	(Nov.) 1511
Discharge for Union Activity - Discharge - Interim Relief - Remedies - Unfair Labour Practice - Board directing interim reinstatement of employee discharged during union organizing campaign	
COOPER INDUSTRIES (CANADA) INC.; RE USWA .....	(Mar.) 225
Discharge for Union Activity - Discharge - Interim Relief - Remedies - Unfair Labour Practice - Union filing complaint in respect of discharge of inside organizer and seeking interim reinstatement - Board not regarding three week delay in bringing application as substantial - Balance of harm weighing in union's favour - Board directing that employee be reinstated pending determination of complaint and that Board notice be posted in workplace	
INTERCON SECURITY LIMITED; RE COMMUNICATION, ENERGY AND PAPERWORKERS UNION OF CANADA.....	(Sept.) 1228
Discharge for Union Activity - Discharge - Practice and Procedure - Unfair Labour Practice - Union filing unfair labour practice complaint under section 92.2 of the <i>Act</i> - Employer failing to reply to union's application, but attending at Board on day of hearing - Board not permitting employer additional time to file response - Board determining matter solely on materials filed by applicant - Application allowed and reinstatement with compensation ordered	
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Discharge for Union Activity - Discharge - Unfair Labour Practice - Discharged employees reinstated by different Board panel on interim basis pending determination of unfair labour practice complaint - At hearing on merits of unfair labour practice complaint, union also complaining about manner of interim reinstatement - Board finding employer in violation of the <i>Act</i> in respect of interim reinstatement by reinstating grievors to night shift and to job mix that was not reflective of range of duties normally performed - In respect of main complaint, Board finding employees' discharges tainted by anti-union <i>animus</i> and directing permanent reinstatement with compensation	
TATE ANDALE CANADA INC.; RE USWA.....	(June) 781
Duty of Fair Referral - Construction Industry - Discharge - Duty of Fair Representation - Intimi-	

dation and Coercion - Practice and Procedure - Unfair Labour Practice - Board dismissing objection to vice-chair sitting alone in this case - Applicant complaining of threats related to his participation in Board proceeding, union charges laid against the applicant, the refusal to permit the applicant to lay union charges against a fellow member, the failure to refer the applicant to work on certain project, the union's failure to assist him with certain grievances, his discharge, and being struck from the hiring hall referral list because of his improper expulsion from the union - Responding parties asking Board to dismiss application on grounds of undue delay - Board considering effect of delay in construction industry - Board dismissing all aspects of complaint for delay, except for allegation concerning removal of applicant from hiring hall list - Nine month delay in respect of referral issue not so long as to cause Board to decline to hear complaint

ROBERT DUMEAH; RE BSOIW LOCAL 700, K.E.W. STEEL FABRICATORS LTD. .... (June)

655

Duty of Fair Referral - Construction Industry - Duty of Fair Representation - Unfair Labour Practice - Applicant alleging that union caused him to lose job by grieving against his employer and disrupting the work site with overly frequent visits by business representatives in furtherance of campaign against him - Complaint dismissed

JOSE MARTINS; RE LIUNA, LOCAL 527 ..... (May)

560

Duty of Fair Referral - Intimidation and Coercion - Remedies - Unfair Labour Practice - Applicant working as owner-operator under agreement between Pipe Line Contractors and Teamsters' union - Board concluding that union's actions in introducing rotation system, referring applicant to Deep River following lay-off from Stittsville loop, handling of applicant's grievance and various other matters not violating union's duty of fair referral - Board finding that union's refusal to allow applicant to pay union dues, renew membership and restore name to dispatch list designed to penalize him for filing complaint with the Board, contrary to section 82(2) of the *Act* - Union directed to compensate applicant for lost earnings and to restore applicant's name to dispatch list upon his tendering payment of outstanding dues

LOUIS LAUZON; RE TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 91 ..... (June)

717

Duty of Fair Representation - Charter of Rights and Freedoms - Constitutional Law - School Boards and Teachers Collective Negotiations Act - Unfair Labour Practice - Board rejecting submission that section 2(1)(f) of the *Labour Relations Act* violating section 7 of the Charter by depriving teachers of the right to bring complaints of unfair representation against their bargaining agent - Board without jurisdiction to deal with application - Application dismissed

GRANT TADMAN; RE ONTARIO ENGLISH CATHOLIC TEACHERS' ASSOCIATION TORONTO SECONDARY UNIT; RE METROPOLITAN SEPARATE SCHOOL BOARD ..... (Aug.)

1096

Duty of Fair Representation - Construction Industry - Discharge - Duty of Fair Referral - Intimidation and Coercion - Practice and Procedure - Unfair Labour Practice - Board dismissing objection to vice-chair sitting alone in this case - Applicant complaining of threats related to his participation in Board proceeding, union charges laid against the applicant, the refusal to permit the applicant to lay union charges against a fellow member, the failure to refer the applicant to work on certain project, the union's failure to assist him with certain grievances, his discharge, and being struck from the hiring hall referral list because of his improper expulsion from the union - Responding parties asking Board to dismiss application on grounds of undue delay - Board considering effect of delay in construction industry - Board dismissing all aspects of complaint for delay, except for allegation concerning



removal of applicant from hiring hall list - Nine month delay in respect of referral issue not so long as to cause Board to decline to hear complaint

ROBERT DUMEAH; RE BSOIW LOCAL 700, K.E.W. STEEL FABRICATORS LTD. .... (June) 655

Duty of Fair Representation - Construction Industry - Duty of Fair Referral - Unfair Labour Practice - Applicant alleging that union caused him to lose job by grieving against his employer and disrupting the work site with overly frequent visits by business representatives in furtherance of campaign against him - Complaint dismissed

JOSE MARTINS; RE LIUNA, LOCAL 527 ..... (May) 560

Duty of Fair Representation - Discharge - Unfair Labour Practice - Employee complaining about union's failure to advance his grievance to arbitration - Board noting that employee's complaint premature and that fact that a grievance does not go to arbitration does not, in itself, establish any arguable breach of the Act - Board exercising its discretion not to inquire into complaint - Complaint dismissed

GEORGE LEE; RE LOCAL 75, UNION REPRESENTATIVE CLEDWYN LONGE ..... (Aug.) 1009

Duty of Fair Representation - Practice and Procedure - Reconsideration - Unfair Labour Practice - Board declining applicant's request to provide him with copy of chair's hearing notes - Reconsideration application dismissed

ANTOINE A. PLENNEVAUX; LIUNA, LOCAL 1036 ..... (May) 593

Duty of Fair Representation - Practice and Procedure - Reconsideration - Unfair Labour Practice - Complainant's request for reconsideration made six months after Board's decision - Board finding no reason to abridge time limit for reconsideration requests established by Rule 85 - Application for reconsideration dismissed

REGINALD FITZGERALD; RE ALEX KEENEY, LOCAL 200, C.A.W.; RE FORD MOTOR COMPANY LTD. .... (Nov.) 1535

Duty of Fair Representation - Practice and Procedure - Unfair Labour Practice - Applicant asserting that union's handling of grievance violating the *Act* - Board receiving evidence of the Applicant and then advising parties that it wished to hear their submissions - Board explaining reasons for its intervention and procedural direction - Board concluding that union did not violate the *Act* in respect of any of its actions - Application dismissed

COVINGTON CLARKE; LOCAL 400 F.W.D. - INTERNATIONAL UNION OF ELECTRONIC, ELECTRICAL, SALARIED, MACHINE AND FURNITURE WORKERS, AFL-CIO/LA-Z-BOY CANADA LIMITED ..... (June) 649

Duty of Fair Representation - Practice and Procedure - Unfair Labour Practice - Applicants asserting that decision not to take their job posting grievance to arbitration violating union's duty of fair representation - Board declining to inquire into application having regard to delay in filing it, previous parallel proceeding, likelihood of success, nature and utility of any remedy that might flow, cost implications, passage of time from critical events, and shifting labour relations situation - Application dismissed

MIRZA ALAM, BRIAN AMES, MAHMOOD ANSARI, MOHD ASLAM, BRUCE BOULTON, ROBERT CAMPBELL, ASHTON CASPERSZ, JANA CIBULKA, ED FODEN, ARTHUR GLEGHORN, NIKOLAS ILKOS, JOE KAROL, STEVE KIRILOVIC, ANTHONY KORSMAN, SHU-TAK KWAN, FRED LA ROCHE, MAHENDAR MAKIM, CAROLYN OAKS, RAJ PURI, VINCE RISI, PHIL RUSSELL, DANNY SAMSON, FRANK SINDELAR, HANK TEEUWISSEN, STAN TRAKALO, BILL TYNDALL AND MICHAEL WONG; RE POWER WORKERS' UNION - CUPE LOCAL 1000; RE ONTARIO HYDRO ..... (June) 627

- Duty of Fair Representation - Practice and Procedure - Unfair Labour Practice - Employee alleging violation of union's duty of fair representation based on a refusal to arbitrate his overtime grievance, an allegedly improperly worded grievance regarding sick days, and the failure of the union to consult him regarding a transfer - At the close of employee's case and at vice-chair's request, employee making argument - Board not satisfied that section 69 of the Act violated and dismissing application
- ARTHUR CHEN; RE LOCAL 43 METRO TORONTO CIVIC EMPLOYEES UNION  
CUPE AFFILIATE; RE THE CITY OF TORONTO ..... (Sept.) 1184
- Duty of Fair Representation - Ratification and Strike Vote - Witness - Unfair Labour Practice - Applicant alleging that union breached *Act* when it negotiated and secured employee ratification of agreement permitting third shift in employer's Oshawa truck plant - Applicant complaining about process by which agreement concluded - Applicant also complaining about conduct allegedly intended to intimidate or penalize witnesses in Board proceeding - Board concluding that allegations without foundation - Application dismissed
- MARY ANNE GREEN, CAW LOCAL 222 UNION MEMBER; RE JOHN CAINES,  
CAW LOCAL 222 UNION PLANT CHAIRPERSON; RE GENERAL MOTORS OF  
CANADA LIMITED ("GMCL") ..... (June) 677
- Duty of Fair Representation - Unfair Labour Practice - Applicants alleging that union's initial refusal to support their wage grievance, followed by its dilatory scheduling of an arbitration hearing and subsequent cancelling of the hearing, violating union's duty of fair representation - Complaint dismissed
- DANIEL ADUSEI AND FELICIA ADUSEI; RE ONA; RE CLARKE INSTITUTE OF  
PSYCHIATRY ..... (May) 519
- Duty of Fair Representation - Unfair Labour Practice - Applicants claiming to have been misled by union in relation to early retirement options available to them and seeking \$35,000 each in compensation - Board satisfied that there was no misrepresentation — innocent or otherwise — by union - Complaint dismissed
- RHEAL V. DIONNE, NORTON SMITH, ROBERT TAYLOR, ROBERT HASIE AND  
JOHN A. MACDONALD, ROBERT BURGON, AND 91 PERSONS LISTED ON  
APPENDIX "A"; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICUL-  
TURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) AND  
ITS LOCAL 199 (ST. CATHARINES) AND ITS LOCAL 1973 (WINDSOR); RE GEN-  
ERAL MOTORS OF CANADA LIMITED ..... (May) 532
- Duty of Fair Representation - Unfair Labour Practice - Board observing that in order to establish breach of duty of fair representation, complainant must demonstrate something more than fact that grievance did not go to arbitration or that he had some argument to make about how collective agreement might be applied to him - Complainant given 21 days to set out why his application should not be dismissed
- LEONARD A. VAILLANT; RE COMMUNICATIONS ENERGY & PAPERWORK-  
ERS' UNION, LOCAL 39; RE LAKEHEAD NEWSPAPER LTD.....(Nov.) 1596
- Duty to Bargain in Good Faith - Adjustment Plan - Practice and Procedure - Unfair Labour Practice - Union alleging that employer breaching duty to bargain in good faith and make every reasonable effort to negotiate adjustment plan - Subsequent to hearing of complaint, and while decision pending, Board informed by employer that parties had reached collective agreement including terms on certain adjustment issues and that application rendered moot - Union disputing employer's position - Board dismissing application on grounds on mootness, and on grounds that it would serve no labour relations purpose to inquire further into application because no remedial relief would be ordered
- ONTARIO HYDRO; RE POWER WORKERS UNION, CUPE LOCAL 1000 ..... (June) 765

- Duty to Bargain in Good Faith - First Contract Arbitration - Interest Arbitration - Practice and Procedure - Unfair Labour Practice - Employer complaining of bad faith bargaining where union put certain issues to interest arbitrator which had not been pursued in bargaining - Board finding nothing illegal about raising “new” issues or changing position in course of submissions to arbitration - Once arbitration process invoked, it is for arbitrator to decide what terms of first agreement will be - Board concluding that facts pleaded disclosing no violation of the *Act* - Application dismissed
- CENTRE JUBILEE CENTRE; RE USWA, GERRY LORANGER, BRIAN SHELL ..... (July) 821
- Duty to Bargain in Good Faith - Interim Relief - Remedies - Unfair Labour Practice - Board making interim order directing employer to permit union to post notice of union meetings and information concerning collective bargaining - Employer directed to immediately post notice of union membership meeting produced by union at hearing - Employer also directed to meet with union’s bargaining committee within 14 days in order that parties bargain in good faith and make every reasonable effort to make a collective agreement
- REYNOLDS-LEMMERZ INDUSTRIES; RE CAW - CANADA ..... (Nov.) 1578
- Duty to Bargain in Good Faith - Interim Relief - Remedies - Unfair Labour Practice - Union alleging violation of employer’s duty to bargain in good faith in failing to disclose during bargaining *de facto* decision to close logging camp - Union seeking interim order that camp be re-opened - Interim order would require employer to return heavy equipment already moved out, and to reverse notification, bumping a re-assignment process that had already taken place - Union failing to act promptly in filing its application with Board - Balance of harm weighing in respondent’s favour - Application dismissed
- AVENOR INC.; IWA CANADA, LOCAL 2693 ..... (Apr.) 340
- Duty to Bargain in Good Faith - Lock-Out - Unfair Labour Practice - Following rejection by union of employer’s final offer, employer locking-out employees and subsequently permanently closing business - Union then accepting offer, but employer taking position that offer no longer available - Board dismissing complaint that employer bargaining in bad faith by refusing to execute collective agreement on terms set out in its final offer - Board not satisfied that employer’s lock-out of employees and subsequent closing unlawfully motivated - Complaints dismissed
- THE PEEL COUNTY RESTAURANT; CTCU ..... (Feb.) 186
- Employee - Bargaining Unit - Certification - Board finding “shift supervisors” to be employees within meaning of the *Act* - Employer and union disputing description of appropriate bargaining unit - Union proposing unit excluding office and sales staff - Employer asserting that excluding office and sales staff would not reflect communities of interest in plant and would lead to serious labour relations problems - Board finding reference to “community of interest” to be unhelpful - Board’s focus should be upon evidence of concrete, demonstrable problems which will result from applicant’s proposed unit - Board finding union’s proposed unit appropriate
- ACTIVE MOLD PLASTIC PRODUCTS LTD.; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA ..... (June) 617
- Employee - Bargaining Unit - Certification - Constitutional Law - Charter of Rights and Freedoms - Membership Evidence - Board determining that section 8(4) of the *Act* not violating freedoms of expression, association and right to equal treatment set out in *Charter* - Board dismissing employees’ objections to validity of trade union’s membership evidence - Board finding union’s proposed “all employee” unit appropriate and rejecting employer’s assertion that the retail and service components of its business so distinct that employees in those



components not sharing community of interests - Board finding "hardware department manager" to be "employee" within meaning of the *Act* - Certificate issuing

KEN BODNAR ENTERPRISES INC.; RE USWA; RE GROUP OF EMPLOYEES..... (June)

688

Employee - Bargaining Unit - Certification - Employee Reference - Practice and Procedure - Union applying for certification and both union and employer participating in waiver process - Union making no challenges to list of employees filed by employer and Officer subsequently announcing the count - Employee list not including four Regional Managers - Union and employer subsequently agreeing on bargaining unit description, but union advising Board that parties disputing whether Regional Managers should be included in bargaining unit - Union asking Board to appoint officer under section 108(2) of the *Act* - Employer objecting to request under section 108(2) as untimely, prejudicial and an abuse of waiver and certification procedure - Board holding that union and employer bound by agreements made in waiver process, including agreements on list of employees in bargaining unit and on geographic scope of bargaining unit - Certificate issuing - Request under section 108(2) not considered by panel in context of certification application

CAA NORTHEASTERN ONTARIO AUTO CLUB AND ONTARIO MOTOR LEAGUE WORLDWIDE TRAVEL (SUDBURY) INC.; USWA..... (Mar.)

208

Employee - Bargaining Unit - Certification - Practice and Procedure - Representation Vote - Parties disputing status of certain individuals - Board rejecting union's submission that doctrines of *res judicata* or issue estoppel applying to prevent employer from taking position different from position taken in union's earlier certification application - Board rejecting employer's submission that in circumstances of the case, including its assertion that union's support barely over 55%, representation vote should be ordered - Board revoking appointment of Labour Relations Officer and directing hearing before panel of Board in order to expedite resolution of bargaining unit configuration issues

REYNOLDS-LEMMERZ INDUSTRIES; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA); RE GROUP OF EMPLOYEES..... (Sept.)

1242

Employee - Bargaining Unit - Certification - Security Guards - Board determining that "site supervisors" employed by security firm not exercising managerial functions within meaning of section 1(3) of the *Act* - "Site supervisors" included in bargaining unit - Final certificate issuing

WACKENHUT OF CANADA LIMITED; RE USWA ..... (Jan.)

91

Employee - Certification - Bargaining Unit - Deputy Treasurer and Works Supervisor employed by municipality found to be 'employees' within meaning of *Act* and included in bargaining unit - Certificate issuing

CORPORATION OF THE TOWN OF BOTHWELL; RE TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, LOCAL NO. 880..... (Mar.)

237

Employee - Certification - Board concluding that Inspectors and Instructors employed by Toronto Transit Commission exercising managerial functions - Inspectors and Instructors not "employees" within meaning of the *Act*

TORONTO TRANSIT COMMISSION; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA); RE AMALGAMATED TRANSIT UNION, LOCAL 113; RE GROUP OF EMPLOYEES ..... (Mar.)

319

Employee - Certification - Board finding that certain persons attending safety orientation session

on date of certification application not employees at work on that date and properly excluded from list of employees

MAIDSTONE MANUFACTURING INC.; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) .....(Aug.) 1011

Employee - Certification - Charges - Employer Support - Evidence - Membership Evidence - Board determining that employee who initiated union organizing campaign not managerial nor employed in position confidential to labour relations and that section 13 of the Act having no application - Evidence not indicating that membership evidence unreliable as indicator that more than 55% of employees in bargaining unit had applied to be union members at date of application - Certificate issuing

BANNERMAN ENTERPRISES INC.; RE USWA; RE GROUP OF EMPLOYEES.....(Nov.) 1489

Employee - Certification - Employee Reference - Board finding secretary/clericals, payroll administrator, municipal law enforcement inspector, property standards officer, and principal planner employed by municipality to be “employees” within meaning of the *Act* - Records management co-ordinator found not to be an “employee”

THE CORPORATION OF THE TOWN OF INNISFIL; RE COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA .....(Jan.) 76

Employee - Certification - Employee Reference - Practice and Procedure - Parties disputing employee status of Discharge Planning Co-Ordinator - Board in receipt of Labour Relations Officer Report including transcript of examination, plus parties’ full written submissions - Board satisfied that matter can be decided on basis of material before it and without further oral hearing

NIAGARA-ON-THE-LAKE GENERAL HOSPITAL; RE ONA ..... (July) 884

Employee - Certification - Occupational Health Nurse found to be “employee” within meaning of the *Act* and included in nurses’ bargaining unit - Board finding that responsibility for completing certain workers’ compensation forms not a managerial function as contemplated by section 1(3) of the *Act*

PUBLIC GENERAL HOSPITAL SOCIETY OF CHATHAM; RE ONA ..... (Feb.) 174

Employee - Certification - Union and employer disputing whether certain individuals should be excluded from bargaining unit because they exercise managerial functions or are employed in confidential capacity - Board finding Activity Director and Registered Nurses employed by nursing home to be “employees” within meaning of the *Act* - Final certificate issuing

FOYER SANSFIELD NURSING HOME, 681356 ONTARIO LIMITED C.O.B. AS; RE USWA .....(Apr.) 393

Employee - Change in Working Conditions - Ratification and Strike Vote - Strike - Strike Replacement Workers - Unfair Labour Practice - Union’s compliance with section 74(5) of Act arising in context of strike replacement application - Whether laid off employee with only possibility of recall entitled to participate in strike vote - Parties agreeing that individual entitled to vote only if found to be employee in bargaining unit - Board finding individual without sufficiently substantial employment attachment to be considered employee within bargaining unit with entitlement to vote - Board finding that employer carrying on business as before in hiring students who had worked for it for the last 4 summers and not recalling individual from lay-off who had worked for it for three weeks almost one year ear-

lier - Applications alleging violation of statutory freeze and violation of strike replacement ban dismissed

GOULARD LUMBER (1971) LIMITED, MARK GOULARD AND ROMEO GOULARD RE IWA-CANADA, LOCAL 1-2693 AND LEO LAFLEUR ..... (Oct.)

1334

Employee - Employee Reference - Board finding Assistant Director of Athletics, Advertising and Publication Officer, Funding-raising Managers, Financial Aid Administrator, Project Co-ordinator and Construction Engineer employed by university to be "employees" within meaning of the *Act* - Leisure Services Officer, Co-ordinator of Policy and Research, Administrative and Production Supervisor, Fine Arts Liaison Officer, Administrative Officer, Convocation Officer, Assistant Director of Secondary School Liaison, and Manager of Administrative Computing found not to be "employees"

YORK UNIVERSITY; RE YORK UNIVERSITY STAFF ASSOCIATION ..... (Jan.)

96

Employee Reference - Bargaining Unit - Certification - Employee - Practice and Procedure - Union applying for certification and both union and employer participating in waiver process - Union making no challenges to list of employees filed by employer and Officer subsequently announcing the count - Employee list not including four Regional Managers - Union and employer subsequently agreeing on bargaining unit description, but union advising Board that parties disputing whether Regional Managers should be included in bargaining unit - Union asking Board to appoint officer under section 108(2) of the *Act* - Employer objecting to request under section 108(2) as untimely, prejudicial and an abuse of waiver and certification procedure - Board holding that union and employer bound by agreements made in waiver process, including agreements on list of employees in bargaining unit and on geographic scope of bargaining unit - Certificate issuing - Request under section 108(2) not considered by panel in context of certification application

CAA NORTHEASTERN ONTARIO AUTO CLUB AND ONTARIO MOTOR LEAGUE WORLDWIDE TRAVEL (SUDBURY) INC.; USWA..... (Mar.)

208

Employee Reference - Certification - Employee - Board finding secretary/clericals, payroll administrator, municipal law enforcement inspector, property standards officer, and principal planner employed by municipality to be "employees" within meaning of the *Act* - Records management co-ordinator found not to be an "employee"

THE CORPORATION OF THE TOWN OF INNISFIL; RE COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA..... (Jan.)

76

Employee Reference - Certification - Employee - Practice and Procedure - Parties disputing employee status of Discharge Planning Co-Ordinator - Board in receipt of Labour Relations Officer Report including transcript of examination, plus parties' full written submissions - Board satisfied that matter can be decided on basis of material before it and without further oral hearing

NIAGARA-ON-THE-LAKE GENERAL HOSPITAL; RE ONA ..... (July)

884

Employee Reference - Employee - Board finding Assistant Director of Athletics, Advertising and Publication Officer, Funding-raising Managers, Financial Aid Administrator, Project Co-ordinator and Construction Engineer employed by university to be "employees" within meaning of the *Act* - Leisure Services Officer, Co-ordinator of Policy and Research, Administrative and Production Supervisor, Fine Arts Liaison Officer, Administrative Officer, Convocation Officer, Assistant Director of Secondary School Liaison, and Manager of Administrative Computing found not to be "employees"

YORK UNIVERSITY; RE YORK UNIVERSITY STAFF ASSOCIATION ..... (Jan.)

96

Employer - Interference in Trade Unions - Intimidation and Coercion - Judicial Review - Settlement - Stay - Strike - Strike Replacement Workers - Unfair Labour Practice - "Home



Cares" contracting with various "service provider" agencies, including Red Cross, to provide various therapeutic and support services to clients in their homes - Red Cross employees commencing legal strike - Home Cares arranging for other service providers to attend to clients - Union alleging breach of statutory ban on use by employer of strike replacement workers - Board not accepting union's argument that Home Cares actually true "employer" in this case or that Home Cares and service providers "acting on behalf" of Red Cross - Applications under section 73.1 and 73.2 dismissed - Board finding that letter sent to Red Cross employees suggesting that employees might lose their jobs if they commenced or stayed on strike violating the Act - Red Cross applying for judicial review on ground that subject matter of Board's unfair labour practice finding had been settled by parties and withdrawn - Red Cross seeking stay of Board's decision pending determination of judicial review application - Stay application dismissed

THE CANADIAN RED CROSS SOCIETY (ONTARIO DIVISION); RE ONTARIO LABOUR RELATIONS BOARD AND THE SERVICE EMPLOYEES INTERNATIONAL UNION, LOCALS 204 AND 532 ..... (Oct.)

1466

Employer - Interference in Trade Unions - Intimidation and Coercion - Strike - Strike Replacement Workers - Unfair Labour Practice - "Home Cares" contracting with various "service provider" agencies, including Red Cross, to provide various therapeutic and support services to clients in their homes - Red Cross employees commencing legal strike - Home Cares arranging for other service providers to attend to clients - Union alleging breach of statutory ban on use by employer of strike replacement workers - Board not accepting union's argument that Home Cares actually true "employer" in this case or that Home Cares and service providers "acting on behalf" of Red Cross - Applications under sections 73.1 and 73.2 dismissed - Board finding that letter sent to Red Cross employees suggesting that employees might lose their jobs if they commenced or stayed on strike violating the Act

RED CROSS SOCIETY ONTARIO DIVISION, THE CANADIAN, VICTORIAN ORDER OF NURSES BRANT-HALDIMAND-NORFOLK, COMCARE (CANADA) LIMITED, MED CARE PARTNERSHIP, THE VISITING HOMEMAKERS ASSOCIATION OF HAMILTON-WENTWORTH, HAMILTON-WENTWORTH HOME CARE PROGRAM - VICTORIAN ORDER OF NURSES AND VICTORIAN ORDER OF NURSES RESPITE PROGRAM, THE REGIONAL MUNICIPALITY OF HAMILTON-WENTWORTH, OLSTEN HEALTH CARE SERVICES, MEDICAL PERSONNEL POOL (HAMILTON) LTD., MOHAWK MEDICAL SERVICES, PARA-MED HEALTH SERVICES AND BRANT COUNTY HOME CARE PROGRAM, VETERANS AFFAIRS CANADA; RE S.E.I.U., LOCAL 204 AND LOCAL 532 ..... (Jan.)

34

Employer Support - Abandonment - Accreditation - Bargaining Rights - Collective Agreement - Construction Industry - Construction Industry Grievance - Judicial Review - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractors Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Respondent applying for judicial review on ground that full Board meeting violated rules of natural justice and seeking interim relief - Motions Court judge granting order compelling attendance of chair, vice-chair and registrar before special examiner to obtain information respecting Board procedures - Motion to produce various reports and documents dismissed - Full panel of Divisional Court allowing appeal and setting aside order of motions court judge

ELLIS-DON LIMITED; RE THE ONTARIO LABOUR RELATIONS BOARD AND IBEW, LOCAL 894 ..... (Jan.)

113

Employer Support - Abandonment - Accreditation - Bargaining Rights - Collective Agreement - Construction Industry - Construction Industry Grievance - Judicial Review - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractors Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Respondent applying for judicial review on ground that full Board meeting violated rules of natural justice and seeking interim relief - Motions Court judge granting order compelling attendance of chair, vice-chair and registrar before special examiner to obtain information respecting Board procedures - Motion to produce various reports and documents dismissed - Full panel of Divisional Court allowing appeal and setting aside order of motions court judge - Court of Appeal dismissing motion for leave to appeal

ELLIS-DON LIMITED; THE OLRB AND IBEW, LOCAL 894..... (June)

801

Employer Support - Certification - Charges - Employee - Evidence - Membership Evidence - Board determining that employee who initiated union organizing campaign not managerial nor employed in position confidential to labour relations and that section 13 of the Act having no application - Evidence not indicating that membership evidence unreliable as indicator that more than 55% of employees in bargaining unit had applied to be union members at date of application - Certificate issuing

BANNERMAN ENTERPRISES INC.; RE USWA; RE GROUP OF EMPLOYEES..... (Nov.)

1489

Employer Support - Certification - Trade Union - Trade Union Status - Unfair Labour Practice - Board declining to bar certification application by employees' association under section 105 of the Act following unsuccessful application to terminate union's bargaining rights - Employees' association found to be a trade union under the Act where applications for membership not completed until several weeks after other steps in forming union - Board not persuaded that employer participated in formation or administration of association - Board directing that ballots cast in pre-hearing representation vote be counted

EUCLID-HITACHI HEAVY EQUIPMENT LTD.; RE EUCLID-HITACHI EMPLOYEES ASSOCIATION; RE CAW-CANADA AND ITS LOCAL 1917..... (Nov.)

1514

Evidence - Adjournment - Construction Industry - Judicial Review - Jurisdictional Dispute - Natural Justice - Practice and Procedure - Witness - Carpenters' and Sheet Metal Workers' unions disputing assignment of work in connection with handling, distribution, rigging, erection and installation of sheet metal siding onto wood - Board confirming assignment to members of Sheet Metal Workers' union - Board summarizing various evidentiary and procedural rulings made during lengthy proceeding - Board not allowing Carpenters' union to call area practice evidence to the extent that its materials had not been properly particularized - Board not permitting Sheet Metal Workers' union to call witness who had already once testified - Other than in reply, a party should not be permitted to recall a witness except in extraordinary circumstances - Carpenters' union moving to terminate proceedings after 10 days of hearing following settlement of its grievance (which constituted initial demand for work in dispute) - Motion to terminate proceedings dismissed - Board noting that jurisdictional dispute proceedings should not generally be terminated after hearing on the merits has begun where it is clear that jurisdictional dispute still exists - Carpenters'

union applying for judicial review on grounds of alleged denial of natural justice - Divisional Court dismissing application with costs

VIC WEST STEEL LIMITED, ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE, SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL 539 AND OLRB; RE CJA, LOCAL 1256..... (June) 803

Evidence - Certification - Charges - Employee - Employer Support - Membership Evidence - Board determining that employee who initiated union organizing campaign not managerial nor employed in position confidential to labour relations and that section 13 of the Act having no application - Evidence not indicating that membership evidence unreliable as indicator that more than 55% of employees in bargaining unit had applied to be union members at date of application - Certificate issuing

BANNERMAN ENTERPRISES INC.; RE USWA; RE GROUP OF EMPLOYEES..... (Nov.) 1489

Evidence - Certification - Charges - Fraud - Intimidation and Coercion - Membership Evidence - Petition - Practice and Procedure - Timeliness - Union's certification application sent by registered mail on August 11 and employees' petition received by private courier at Board's office on August 12 - Rules of Procedure providing that date of filing is date document received by Board or, if mailed by registered mail, date on which it is mailed as verified by Post Office - Combined operation of section 8(4) of the Act and Board's Rules making petition untimely - Board dismissing objecting employees' allegations concerning union's collection of membership evidence for failure to make out *prima facie* case - Board declining objecting employees' request that Board exercise its discretion under section 8(3) of the Act to order representation - Certificate issuing

LUTHERAN NURSING HOME (OWEN SOUND); RE CLC; RE ROSANNE GILLARD AND SANDRA MARSHALL ..... (Oct.) 1362

Evidence - Certification - Charges - Intimidation and Coercion - Membership Evidence - Practice and Procedure - Board declining to receive into evidence certain allegations which did not comply with Rules 14 and 16 of Board's Rules of Procedure - Board declining to receive other proffered evidence offending collateral evidence rule - Board not satisfied that allegations that union organizers had attempted to obtain membership evidence through coercion substantiated - Certificate issuing - Employer's reconsideration application dismissed

ROYALGUARD VINYL CO., A DIVISION OF ROYPLAST LIMITED; RE SAMUEL OFOSU ANSAH; RE USWA..... (Aug.) 1057

Evidence - Certification - Membership Evidence - Form A-4 declarant disclosing that ten membership cards received by mail and that no additional steps taken to verify membership evidence - Board not prepared to give full evidentiary weight to mailed membership cards where declarant's only basis for asserting that cards signed by persons indicated on them is declarant's knowledge that cards received at union office in sealed business reply envelopes on specified dates, that the envelopes were delivered to desk of receiver on those dates, and that receiver opened the envelopes personally and signed cards on those dates - Board directing taking of representation vote

SEEBURN DIVISION OF VENTRA GROUP INC.; RE USWA ..... (Nov.) 1585

Evidence - Certification - Petition - Practice and Procedure - Termination - Board ruling that employee who had been discharged contrary to the Act, prior to application to terminate union's bargaining rights, should be included on list of employees for purposes of the count - Board not giving any weight to petition sent to Board by fax - Applicant conceding that



re-affirmation evidence filed by union representing voluntary expression of employee wishes - Application dismissed

MEAFORD BEAVER VALLEY COMMUNITY SUPPORT SERVICES; RE SONYA TER STEGE; RE OPSEU ..... (Oct.) 1375

Evidence - Construction Industry - Practice and Procedure - Related Employer - Remedies - In absence of contrary pleadings or evidence, Board deeming respondents to have accepted certain facts stated in application - Board finding five respondents engaged in related activities and finding common direction and control among four respondents - Board drawing adverse inferences from lack of production and lack of evidence produced by those respondents - Single employer declaration issuing in respect of four respondents - Board distinguishing *Golden Arm Flooring* case in respect of joint and several liability where damages awarded in earlier Board proceeding against one respondent predated relationship between it and other respondents - Application in respect of fifth respondent dismissed

CENTRAL FORMING & CONCRETE INC.; ALTRACON CONSTRUCTION LIMITED; GASPO CONSTRUCTION LIMITED; ASHWORTH ENGINEERING INC.; RE CARPENTERS AND ALLIED WORKERS, LOCAL 27, CJA ..... (July) 805

Evidence - Petition - Practice and Procedure - Termination - Applicant not providing Board with detailed evidence of origination of petition, nor any evidence with respect to circulation of petition or continuity of carriage of petition after it was received by employee collecting signatures and then to the Board, nor any evidence of circumstances in which each and every signature collected - Union's non-suit motion granted - Application to terminate bargaining rights dismissed

MAPLE LODGE FARMS LTD.; RE GARAGE WORKERS MAPLE LODGE FARMS LTD.; RE UFCW, LOCAL 175 ..... (Oct.) 1371

Evidence - Practice and Procedure - Reconsideration - Union Successor Status - Objecting employees seeking reconsideration of Board's decision declaring Steelworkers' to be successor union to RWDSU on grounds that the employer had posted no notice of the proceeding in the workplace - At conclusion of objecting employees' case, employer making motion for early dismissal of the reconsideration application - Board reviewing jurisprudence and policy considerations associated with procedures for facilitating swift, balanced hearings which combine expedition and full opportunity to be heard - Board not requiring employer or Steelworkers' to make election as to whether to call evidence or not, but dismissing employer's motion

THE GREAT ATLANTIC & PACIFIC COMPANY OF CANADA, LIMITED; RE RWDSU, AFL-CIO-CLC AND ITS LOCAL AFFILIATES RWDSU AFL-CIO-CLC, LOCAL 414, 429, 545, 579, 582, 915 AND 991; RE RWDSU, CANADIAN SERVICE SECTOR DIVISION OF THE USWA, LOCAL 414.....(Aug.) 1127

Evidence - Practice and Procedure - Union requesting that employer be directed to produce copy of "pay equity report" prepared by consultant - Employer submitting that report's production prevented by provisions of *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* - Board directing that report be produced - Board finding report relevant and determining that production not prevented by *MFIPPA* - Sections 51(1) and 51(2) of *MFIPPA* ensuring that Board's power to compel witnesses and production of documents maintained

ESSEX COUNTY BOARD OF EDUCATION; RE ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION ..... (Feb.) 129

Final Offer Vote - First Contract Arbitration - Reference - Union's request for first contract arbitration under section 41(1.2) of the Act followed by employer's request for final offer vote under section 40 of the Act - Union objecting to final offer vote - Minister of Labour refer-

ring issue to Board for its advice - Board advising Minister that *Labour Relations Act* not establishing any scheme of priority as between requests under sections 40 and 41 of the Act - Board finding no incompatibility in operation of sections 40 and 41 - Minister advised that final offer vote should proceed on usual terms

ISADORE ROY LUMBER LIMITED; RE INTERNATIONAL UNION OF WOOD-  
WORKERS, LOCAL 2693 ..... (Sept.) 1233

First Contract Arbitration - Duty to Bargain in Good Faith - Interest Arbitration - Practice and Procedure - Unfair Labour Practice - Employer complaining of bad faith bargaining where union put certain issues to interest arbitrator which had not been pursued in bargaining - Board finding nothing illegal about raising "new" issues or changing position in course of submissions to arbitration - Once arbitration process invoked, it is for arbitrator to decide what terms of first agreement will be - Board concluding that facts pleaded disclosing no violation of the *Act* - Application dismissed

CENTRE JUBILEE CENTRE; RE USWA, GERRY LORANGER, BRIAN  
SHELL ..... (July) 821

First Contract Arbitration - Final Offer Vote - Reference - Union's request for first contract arbitration under section 41(1.2) of the *Act* followed by employer's request for final offer vote under section 40 of the *Act* - Union objecting to final offer vote - Minister of Labour referring issue to Board for its advice - Board advising Minister that *Labour Relations Act* not establishing any scheme of priority as between requests under sections 40 and 41 of the *Act* - Board finding no incompatibility in operation of sections 40 and 41 - Minister advised that final offer vote should proceed on usual terms

ISADORE ROY LUMBER LIMITED; RE INTERNATIONAL UNION OF WOOD-  
WORKERS, LOCAL 2693 ..... (Sept.) 11233

Fraud - Certification - Charges - Evidence - Intimidation and Coercion - Membership Evidence - Petition - Practice and Procedure - Timeliness - Union's certification application sent by registered mail on August 11 and employees' petition received by private courier at Board's office on August 12 - Rules of Procedure providing that date of filing is date document received by Board or, if mailed by registered mail, date on which it is mailed as verified by Post Office - Combined operation of section 8(4) of the *Act* and Board's Rules making petition untimely - Board dismissing objecting employees' allegations concerning union's collection of membership evidence for failure to make out *prima facie* case - Board declining objecting employees' request that Board exercise its discretion under section 8(3) of the *Act* to order representation - Certificate issuing

LUTHERAN NURSING HOME (OWEN SOUND); RE CLC; RE ROSANNE GIL-  
LARD AND SANDRA MARSHALL ..... (Oct.) 1362

Fraud - Certification - Charges - Intimidation and Coercion - Membership Evidence - Reconsideration - Unfair Labour Practice - Following union's certification, certain employees making unfair labour practice application complaining about manner in which fellow employee collected membership evidence - Employer also seeking reconsideration of certification decision - Board hearing evidence of nine persons and resolving conflicting evidence in favour of union's witness - Board finding that employee collector did not contravene *Act* when he approached employees to obtain membership evidence - Employee collector's actions not causing Board to conclude that filed membership evidence unreliable - Applications dismissed

MADAWASKA HARDWOOD FLOORING INC.; RE IWA - CANADA ..... (Mar.) 267

Health and Safety - Discharge - Applicant alleging that he was discharged, contrary to *Occupational Health and Safety Act*, as reprisal for having made certain complaints about availability of gloves at his workplace and/or because he had developed dermatitis as result

of performing work without gloves - Employer affirmatively establishing that applicant terminated for reasons unrelated to health and safety matters - Application dismissed

PRECISION ENGINEERING COMPANY DIVISION OF PECO TOOL AND DIE LTD.; RE MARK DESIPIO ..... (May) 596

Health and Safety - Discharge - Applicant employed as office cleaner suffering from thyroid condition - Employer requiring its employees to wear uniform including bow-tie tied around neck - Applicant's thyroid condition aggravated by anything around her neck - Employer suspending applicant for wearing bow-tie at third button of her blouse - Board concluding that applicant honestly and reasonably refused to wear item of clothing in manner she believed would endanger her health - *Occupational Health and Safety Act* applying in circumstances where health and safety risk identified by worker is risk to her as a result of disability - Employer directed to reinstate applicant to former position with full compensation and to permit applicant to wear bow-tie clipped at third button of uniform

HURLEY CORPORATION; RE MARIA RAPOSO ..... (Aug.) 1002

Health and Safety - Discharge - Employer not satisfying Board, on balance of probabilities, that complainant's health and safety activities not at least part of reason for his discharge - Complainant subsequently finding new employment and not seeking reinstatement - Complaint allowed - Damages ordered

MLG ENTERPRISES LIMITED; RE JASON JAMES ..... (Nov.) 1550

Hospital Labour Disputes Arbitration Act - Bargaining Unit - Combination of Bargaining Units - Reference - Board finding residential care programme of children's treatment centre to be "hospital" within meaning of Hospital Labour Disputes Arbitration Act, and that whole of treatment centre also a "hospital" within meaning of the Act - Union holding bargaining rights for unit of employees working in group homes in residential care programme and for two units of therapists at treatment centre - Union's application to combine bargaining units allowed

GEORGE JEFFREY CHILDREN'S TREATMENT CENTRE; SEU, LOCAL 268 ..... (Dec.) 1656

*Hospital Labour Disputes Arbitration Act* - Change in Working Condition - Unfair Labour Practice - ONA alleging that hospital employer violating statutory freeze by granting non-bargaining unit staff one extra week of vacation entitlement and refusing to extend that benefit to ONA bargaining unit members still without first collective agreement - Board applying "reasonable expectations" test - Application allowed - Employer directed to grant bargaining unit employees same compensation package granted to non-bargaining unit employees

THE BOARD OF GOVERNORS OF THE BELLEVILLE GENERAL HOSPITAL; RE ONA ..... (July) 904

*Hospital Labour Disputes Arbitration Act* - Change in Working Conditions - Interference in Trade Unions - Unfair Labour Practice - Board dismissing union's complaint alleging that hospital employer violating Act by instituting new benefits plan for non-unionized employees and raising long term disability premium for union's members

THE HOSPITAL FOR SICK CHILDREN; RE CUPE, LOCAL 2816 ..... (Sept.) 1255

Hospital Labour Disputes Arbitration Act - Reference - Board finding retirement home to be "hospital" within meaning of the *Hospital Labour Disputes Arbitration Act*

SELECT LIVING (1991) LTD.; RE PRACTICAL NURSES FEDERATION OF ONTARIO ..... (Aug.) 1082

Hospital Labour Disputes Arbitration Act - Reference - Board finding seniors' residential facility



to be home for the aged and, thus, a “hospital” within the meaning of the *Hospital Labour Disputes Arbitration Act*

BRANCH 133 LEGION VILLAGE INC.; RE UFCW, LOCAL 175 .....(Aug.) 970

Hospital Labour Disputes Arbitration Act - Reference - Employees of organization providing services to adults with developmental handicaps found to be “hospital employees” within meaning of Hospital Labour Disputes Arbitration Act

SUREX COMMUNITY SERVICES; RE OPSEU AND ITS LOCAL 5102 ..... (Oct.) 1430

*Hospital Labour Disputes Arbitration Act*- Interim Relief - Change in Working Conditions - Discharge - Discharge for Union Activity - Remedies - Settlement - Unfair Labour Practice - Union certified three years earlier and still without first collective agreement - Union making unfair labour practice complaint in respect of work reorganization (“alternative placement”) and lay-offs affecting one-half of the bargaining unit - Union alleging that employer’s conduct motivated by anti-union *animus*, breaching statutory freeze and violating minutes of settlement of earlier complaint - Union seeking interim order preserving *status quo* pending disposition of unfair labour practice complaint or until interest arbitration award issued - Employer implementing impugned changes after notice of union’s interim relief application, but before Board hearing - Board concluding that balance of harm weighing in favour making interim order - Employer directed to restore and maintain *status quo* with respect to bargaining unit jobs pending disposition of union’s complaint

THE MISSISSAUGA HOSPITAL; RE THE PRACTICAL NURSES FEDERATION OF ONTARIO .....(July) 934

Interest Arbitration - Duty to Bargain in Good Faith - First Contract Arbitration - Practice and Procedure - Unfair Labour Practice - Employer complaining of bad faith bargaining where union put certain issues to interest arbitrator which had not been pursued in bargaining - Board finding nothing illegal about raising “new” issues or changing position in course of submissions to arbitration - Once arbitration process invoked, it is for arbitrator to decide what terms of first agreement will be - Board concluding that facts pleaded disclosing no violation of the *Act* - Application dismissed

CENTRE JUBILEE CENTRE; RE USWA, GERRY LORANGER, BRIAN SHELL .....(July) 821

Interference in Trade Unions - Certification - Certification Where Act Contravened - Construction Industry - Board finding lay-off of nine employees tainted by anti-union animus - Union certified under section 9.2 of the Act

DOMUS INDUSTRIES LTD.; RE PAT, LOCAL UNION 1891 .....(Dec.) 1630

Interference in Trade Unions - Certification - Certification Where Act Contravened - Change in Working Conditions - Discharge - Discharge for Union Activity - Unfair Labour Practice - Board finding that company did not violate Act in discharging union supporter or three managers, and that a number of other allegations not established - Employer violating Act in telling employee that he could not solicit for union on company property, promising to clear discipline records, removing last names from work schedules and time cards and offering Christmas bonus to employees as inducement to avoid dealing with union and thus interfering with union’s organizing drive - Board inviting submissions on whether it ought to determine application under “old” section 8 of the Act before hearing adjourned unfair labour practice complaint - Board remaining seized as to all remedial matters

PRICE CLUB WESTMINSTER; PRICE CLUB ST. LAURENT INC. C.O.B. AS; RE UFCW, LOCAL 175 .....(Aug.) 1029

Interference in Trade Unions - Certification - Certification Where Act Contravened - Construction Industry - Discharge - Discharge for Union Activity - Intimidation and Coercion -

- Remedies - Unfair Labour Practice - Employer violating Act in threatening and intimidating one employee with respect to union membership and in laying off second employee because of his union activity - Reinstatement with compensation ordered - Board determining that as result of employer's violations true wishes of employees unlikely to be ascertained - Union certified under section 9.2 of the Act
- BASILE INTERIORS LTD.; RE PAT, LOCAL 1494 .....(Aug.) 963
- Interference in Trade Unions - Change in Working Conditions - *Hospital Labour Disputes Arbitration Act* - Unfair Labour Practice - Board dismissing union's complaint alleging that hospital employer violating Act by instituting new benefits plan for non-unionized employees and raising long term disability premium for union's members
- THE HOSPITAL FOR SICK CHILDREN; RE CUPE, LOCAL 2816 ..... (Sept.) 1255
- Interference in Trade Unions - Change in Working Conditions - Interim Relief - Remedies - Unfair Labour Practice - New schedule alleged by union to violate statutory freeze and to be motivated by anti-union considerations - Union filing unfair labour practice complaint and seeking interim relief - Balance of harm weighing in favour of union - Employer directed to revoke new scheduling system and to reinstate prior system on interim basis pending disposition of union's unfair labour practice complaint
- VISTAMERE RETIREMENT RESIDENCE, 678114 ONTARIO INC. C.O.B. AS; RE PRACTICAL NURSES FEDERATION OF ONTARIO ..... (Sept.) 1274
- Interference in Trade Unions - Change in Working Conditions - Intimidation and Coercion - Unfair Labour Practice - Board finding that installation of video surveillance cameras in workplace motivated, at least in part, by anti-union *animus* - Installation of cameras also violating statutory freeze - Union's complaint allowed and employer directed to remove cameras forthwith
- ROYALGUARD VINYL CO., A DIVISION OF ROYPLAST LIMITED; RE USWA .....(Jan.) 59
- Interference in Trade Unions - Employer - Intimidation and Coercion - Judicial Review - Settlement - Stay - Strike - Strike Replacement Workers - Unfair Labour Practice - "Home Cares" contracting with various "service provider" agencies, including Red Cross, to provide various therapeutic and support services to clients in their homes - Red Cross employees commencing legal strike -Home Cares arranging for other service providers to attend to clients - Union alleging breach of statutory ban on use by employer of strike replacement workers - Board not accepting union's argument that Home Cares actually true "employer" in this case or that Home Cares and service providers "acting on behalf" of Red Cross - Applications under section 73.1 and 73.2 dismissed - Board finding that letter sent to Red Cross employees suggesting that employees might lose their jobs if they commenced or stayed on strike violating the Act - Red Cross applying for judicial review on ground that subject matter of Board's unfair labour practice finding had been settled by parties and withdrawn - Red Cross seeking stay of Board's decision pending determination of judicial review application - Stay application dismissed
- THE CANADIAN RED CROSS SOCIETY (ONTARIO DIVISION); RE ONTARIO LABOUR RELATIONS BOARD AND THE SERVICE EMPLOYEES INTERNATIONAL UNION, LOCALS 204 AND 532 ..... (Oct.) 1466
- Interference in Trade Unions - Employer - Intimidation and Coercion - Strike - Strike Replacement Workers - Unfair Labour Practice - "Home Cares" contracting with various "service provider" agencies , including Red Cross, to provide various therapeutic and support services to clients in their homes - Red Cross employees commencing legal strike - Home Cares arranging for other service providers to attend to clients - Union alleging breach of statutory ban on use by employer of strike replacement workers - Board not accepting

union's argument that Home Cares actually true "employer" in this case or that Home Cares and service providers "acting on behalf" of Red Cross - Applications under sections 73.1 and 73.2 dismissed - Board finding that letter sent to Red Cross employees suggesting that employees might lose their jobs if they commenced or stayed on strike violating the *Act*

RED CROSS SOCIETY ONTARIO DIVISION, THE CANADIAN, VICTORIAN ORDER OF NURSES BRANT-HALDIMAND-NORFOLK, COMCARE (CANADA) LIMITED, MED CARE PARTNERSHIP, THE VISITING HOMEMAKERS ASSOCIATION OF HAMILTON-WENTWORTH, HAMILTON-WENTWORTH HOME CARE PROGRAM - VICTORIAN ORDER OF NURSES AND VICTORIAN ORDER OF NURSES RESPITE PROGRAM, THE REGIONAL MUNICIPALITY OF HAMILTON-WENTWORTH, OLSTEN HEALTH CARE SERVICES, MEDICAL PERSONNEL POOL (HAMILTON) LTD., MOHAWK MEDICAL SERVICES, PARA-MED HEALTH SERVICES AND BRANT COUNTY HOME CARE PROGRAM, VETERANS AFFAIRS CANADA; RE S.E.I.U., LOCAL 204 AND LOCAL 532 .....(Jan.)

34

Interference in Trade Unions - Interim Relief - Intimidation and Coercion - Remedies - Trusteeship - Unfair Labour Practice - Union Successor Status - Local 75 of Hotel employees' union purporting to disaffiliate from union - Local placed under trusteeship - Local 75 filing unfair labour practice complaint against union and named employer in connection with employer's decision to retain dues in escrow - Local 75 seeking interim order directing employer to remit dues to it - In response to Local 75's application, union filing its own unfair labour practice complaint, its own successor rights application under section 63 of the *Act*, and its own interim relief application - Board not persuaded that any interim order warranted at this stage - Application for interim relief dismissed

WESTBURY HOWARD JOHNSON HOTEL ["THE WESTBURY"], AND H.E.R.E. ["THE PARENT UNION"]; RE H.E.R.E., LOCAL 75 ["LOCAL 75"] .....(Aug.)

1166

Interference in Trade Unions - Interim Relief - Intimidation and Coercion - Remedies - Unfair Labour Practice - Union seeking interim relief in connection with unfair labour practice complaint alleging that demotion of employee from group leader position violating the *Act* - Board directing that employee be reinstated to his position on interim basis pending final disposition of unfair labour practice complaint

LEO SAKATA ELECTRONICS (CANADA) LTD.; RE IWA CANADA ..... (Oct.)

1359

Interference in Trade Unions - Intimidation and Coercion - Lock-Out - Strike - Strike Replacement Workers - Unfair Labour Practice - Board providing reasons for earlier bottom-line decision in respect of lock-out and violation of section 73.1 of the *Act* - Wearing of union T-shirts in workplace lawful activity protected by *Act* - Employer's refusal to allow employees wearing such T-shirts to work amounting to lock-out - Employer violating section 73.1 of the *Act* by using services of other employees in bargaining unit during lock-out - Board directing employer to cease and desist from using services of employees in bargaining unit so long as lock-out continuing

MISSISSAUGA HYDRO ELECTRIC COMPANY; RE IBEW, LOCAL 636 ..... (Oct.)

1376

Interference in Trade Unions - Intimidation and Coercion - Lock-Out - Strike - Strike Replacement Workers - Unfair Labour Practice - Wearing of union T-shirts in workplace lawful activity protected by *Act* - Employer's refusal to allow employees wearing such T-shirts to work amounting to lock-out - Employer violating section 73.1 of the *Act* by using services of other employees in bargaining unit during lock-out - Board directing employer to cease and desist from using services of employees in bargaining unit so long as lock-out continuing

MISSISSAUGA HYDRO ELECTRIC COMPANY; RE IBEW, LOCAL 636 ..... (July)

883



- Interference in Trade Unions - Unfair Labour Practice - Employer prohibiting wearing of union buttons on threat of discipline violating the *Act* - Application allowed
- METROLAND PRINTING, PUBLISHING AND DISTRIBUTING; RE SOUTHERN ONTARIO NEWSPAPER GUILD ..... (June) 738
- Interference with Trade Unions - Certification - Certification Where Act Contravened - Intimidation and Coercion - Remedies - Unfair Labour Practice - Employer found to have violated Act by certain statements contained in bulletins distributed to employees, certain statements made by employer at meeting with employees, and by certain statements made to two employees about soliciting support for the union - Board directing employer to post and distribute Board notice to employees, to permit union access to plant during working hours for purpose of convening meeting with employees out of presence of members of management, and to rescind written warnings given to two employees - Board declining to certify union under section 9.2 of the Act - Representation vote directed
- CANAC KITCHENS LIMITED; RE CJA ..... (Aug.) 972
- Interference with Trade Unions - Intimidation and Coercion - Unfair Labour Practice - Board finding employer's remarks to group of employees calculated to use promises to undermine union's legitimate authority as bargaining agent and thus interfering with union's representation of its members - Application allowed
- PHARMAPHIL, A DIVISION OF R.P. SCHERER CANADA INC.; RE UFCW, LOCAL 175 AND 633 ..... (June) 770
- Interim Relief - Certification - Practice and Procedure - Reconsideration - Stay - Employer applying for reconsideration of "bottom line" decision to certify union and seeking interim order staying Board's decision pending issuance of reasons for decision - Board explaining importance of avoiding delay in labour relations and practice of issuing "bottom line" decisions with reasons to follow - Balance of harm weighing against staying Board's decision - Application dismissed
- ROYALGUARD VINYL CO., A DIVISION OF ROYPLAST LIMITED; RE USWA ..... (June) 775
- Interim Relief - Change in Working Conditions - Interference in Trade Unions - Remedies - Unfair Labour Practice - New schedule alleged by union to violate statutory freeze and to be motivated by anti-union considerations - Union filing unfair labour practice complaint and seeking interim relief - Balance of harm weighing in favour of union - Employer directed to revoke new scheduling system and to reinstate prior system on interim basis pending disposition of union's unfair labour practice complaint
- VISTAMERE RETIREMENT RESIDENCE, 678114 ONTARIO INC. C.O.B. AS; RE PRACTICAL NURSES FEDERATION OF ONTARIO ..... (Sept.) 1274
- Interim Relief - Change in Working Conditions - Related Employer - Remedies - Unfair Labour Practice - Board making interim order directing employer to rescind or suspend operation of new arrangements affecting employees pending determination of union's complaint or expiration of "freeze", whichever first occurs
- CHECKER LIMOUSINE AND AIRPORT SERVICE, G. HANLON HOLDINGS INC., G.J. HANLON ("HANLON") AND J. ORENDORFF, 947465 ONTARIO LTD., C.O.B. AS; RE RETAIL WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF THE UNITED STEELWORKERS OF AMERICA, LOCALS 414, 422, 440, 448, 461, 483, 488, 1000 AND 1688 ..... (Aug.) 991
- Interim Relief - Change in Working Conditions - Remedies - Unfair Labour Practice - Board

directing employer to maintain present scheduling system on interim basis pending disposition of union's unfair labour practice application

VISTAMERE RETIREMENT RESIDENCE, 678114 ONTARIO INC. C.O.B. AS; RE PRACTICAL NURSES FEDERATION OF ONTARIO .....(Nov.) 1602

Interim Relief - Change in Working Conditions - Remedies - Unfair Labour Practice - Union alleging that change in benefit plan and change in method of wage payment to particular classification improperly motivated and violating statutory freeze - Union's application for interim relief dismissed on grounds of delay

THE BRICK WAREHOUSE CORPORATION; RE SEU LOCAL 268, AFFILIATED WITH THE S.E.I.U., A.F. OF L., C.I.O. AND C.L.C. ....(Aug.) 1116

Interim Relief - Change in Working Conditions - Unfair Labour Practice - Remedies - Board directing employer to defer implementation of announced shift/schedule changes pending determination of union's unfair labour practice complaint

MULTIPAK LTD.; RE TORONTO TYPOGRAPHICAL UNION NO. 91-0 .....(July) 884

Interim Relief - Change in Working Conditions - Discharge - Discharge for Union Activity - Remedies - Unfair Labour Practice - Union filing unfair labour practice complaint in respect of employee's discharge and in respect of work reorganization and second employee's demotion alleged to violate statutory freeze - Union seeking interim relief pending determination of complaint - Board declining to order reinstatement of discharged employee but directing employer to continue or restore second employee's terms and conditions of employment on interim basis

OMBUDSMAN ONTARIO; RE OPEIU, LOCAL 343 .....(July) 885

Interim Relief - Consent to Prosecute - Remedies - Unfair Labour Practice - Union filing complaint and seeking consent to prosecute in respect of alleged violation of earlier Board order directing that key union supporter be reinstated to office duties - Union seeking interim order reinstating employee - Board noting considerable labour relations harm of leaving Board order in state of non-compliance - Board directing that employee be reinstated and that employer post Board notice in workplace

BANNERMAN ENTERPRISES INC.; RE USWA .....(Sept.) 1179

Interim Relief - Crown Employees Collective Bargaining Act - Change in Working Conditions - Remedies - Unfair Labour Practice - Union alleging that employers violating statutory freeze by altering employees' pension plan and seeking interim relief pending disposition of complaint - Employers submitting that Board should not grant interim relief which is tantamount to final disposition of main complaint - Board not agreeing that interim relief never appropriate in such circumstances - Board satisfied that balance of harm favouring union and that interim relief should be granted - Board directing employers to provide bargaining unit employees with pension plan equivalent to Public Service Pension Plan pending disposition of unfair labour practice complaint

BEEF IMPROVEMENT ONTARIO INCORPORATED, THE CROWN IN RIGHT OF ONTARIO (AS REPRESENTED BY THE ONTARIO MINISTRY OF AGRICULTURE AND FOOD) AND ONTARIO SWINE IMPROVEMENT ONTARIO INCORPORATED AND; RE OPSEU; RE GROUP OF EMPLOYEES.....(Apr.) 341

Interim Relief - Discharge - Discharge for Union Activity - Practice and Procedure - Remedies - Unfair Labour Practice - Board discussing importance of filing full and complete declarations in applications for interim relief - Board directing that two of three discharged employees be reinstated pending determination of unfair labour practice complaint - Board

determining that balance of harm weighing in employer's favour in respect of third discharged employee	
SHIRLON PLASTICS INC.; RE UFCW, AFL/CIO, CLC .....	(Aug.) 1086
Interim Relief - Discharge - Discharge for Union Activity - Remedies - Board reinstating discharged resident superintendents on interim basis pending disposition of unfair labour practice complaint - Board clarifying that interim reinstatement involving both previous benefits of employment (including residence) and obligations	
SHELTER CANADIAN PROPERTIES LIMITED; RE USWA .....	(Apr.) 482
Interim Relief - Discharge - Discharge for Union Activity - Remedies - Trade Union - Trade Union Status - Employees discharged after signing letter setting out dissatisfaction with working conditions and asking employer to recognize them in representative capacity - Employees filing unfair labour practice complaint and seeking interim reinstatement - Employer asking Board to dismiss interim relief application and unfair labour practice complaint on ground that employees not engaged in trade union activity - Board satisfied that arguable case made out that employees attempting to establish association that might have acquired characteristics of "trade union" under the <i>Act</i> and that terminations motivated, at least in part, by their participation in effort to negotiate collectively with their employer - Balance of harm favouring granting relief - Interim reinstatement ordered	
MINIWORLD MANAGEMENT, OPERATING AS NORTH YORK INFANT NURSERY AND PRESCHOOL; RE MADELENE ALAGANO, CATALINA ALVAREZ, ELIZABETH ARAUJO, ELEEN BUCKLEY, SUZANNA CABRAL AND SUSAN CHISLETT .....	(Apr.) 455
Interim Relief - Discharge - Discharge for Union Activity - Remedies - Unfair Labour Practice - Board directing employer to provide work to its employees equivalent to number of hours provided when operating two full shifts until Board determining if lay-off of 23 employees legitimate	
EARNWAY INDUSTRIES (CANADA) LTD.; RE IWA CANADA .....	(Nov.) 1511
Interim Relief - Discharge - Discharge for Union Activity - Remedies - Unfair Labour Practice - Board directing interim reinstatement of employee discharged during union organizing campaign	
COOPER INDUSTRIES (CANADA) INC.; RE USWA .....	(Mar.) 225
Interim Relief - Discharge - Discharge for Union Activity - Remedies - Unfair Labour Practice - Union filing complaint in respect of discharge of inside organizer and seeking interim reinstatement - Board not regarding three week delay in bringing application as substantial - Balance of harm weighing in union's favour - Board directing that employee be reinstated pending determination of complaint and that Board notice be posted in workplace	
INTERCON SECURITY LIMITED; RE COMMUNICATION, ENERGY AND PAPERWORKERS UNION OF CANADA .....	(Sept.) 1228
Interim Relief - Duty to Bargain in Good Faith - Remedies - Unfair Labour Practice - Board making interim order directing employer to permit union to post notice of union meetings and information concerning collective bargaining - Employer directed to immediately post notice of union membership meeting produced by union at hearing - Employer also directed to meet with union's bargaining committee within 14 days in order that parties bargain in good faith and make every reasonable effort to make a collective agreement	
REYNOLDS-LEMMERZ INDUSTRIES; RE CAW - CANADA .....	(Nov.) 1578
Interim Relief - Duty to Bargain in Good Faith - Remedies - Unfair Labour Practice - Union alleging violation of employer's duty to bargain in good faith in failing to disclose during	



bargaining *de facto* decision to close logging camp - Union seeking interim order that camp be re-opened - Interim order would require employer to return heavy equipment already moved out, and to reverse notification, bumping a re-assignment process that had already taken place - Union failing to act promptly in filing its application with Board - Balance of harm weighing in respondent's favour - Application dismissed

AVENOR INC.; IWA CANADA, LOCAL 2693 ..... (Apr.) 340

Interim Relief - Interference in Trade Unions - Intimidation and Coercion - Remedies - Trusteeship - Unfair Labour Practice - Union Successor Status - Local 75 of Hotel employees' union purporting to disaffiliate from union - Local placed under trusteeship - Local 75 filing unfair labour practice complaint against union and named employer in connection with employer's decision to retain dues in escrow - Local 75 seeking interim order directing employer to remit dues to it - In response to Local 75's application, union filing its own unfair labour practice complaint, its own successor rights application under section 63 of the Act, and its own interim relief application - Board not persuaded that any interim order warranted at this stage - Application for interim relief dismissed

WESTBURY HOWARD JOHNSON HOTEL ["THE WESTBURY"], AND H.E.R.E. ["THE PARENT UNION"]; RE H.E.R.E., LOCAL 75 ["LOCAL 75"] ..... (Aug.) 1166

Interim Relief - Interference in Trade Unions - Intimidation and Coercion - Remedies - Unfair Labour Practice - Union seeking interim relief in connection with unfair labour practice complaint alleging that demotion of employee from group leader position violating the Act - Board directing that employee be reinstated to his position on interim basis pending final disposition of unfair labour practice complaint

LEO SAKATA ELECTRONICS (CANADA) LTD.; RE IWA CANADA ..... (Oct.) 1359

Interim Relief - Picketing - Remedies - Employer making application under section 11.1 of the Act for restrictions with respect to picketing - Employer seeking interim order restricting the picketing pending determination of its section 11.1 application - Balance of harm weighing against making interim order sought - Application for interim relief dismissed

THE GREAT ATLANTIC & PACIFIC COMPANY OF CANADA LIMITED; RE UFCW, LOCALS 175 AND 633 AND SHELLY FAIR SERVICE, SCOTT CONSTABLE, PEGGY SWIFT AND GARY DIMOCK ..... (Aug.) 1119

Interim Relief - Remedies - Unfair Labour Practice - Union seeking interim reinstatement of 28 employees laid off as result of employer's decision to contract out warehousing operations - Union's delay in bringing interim relief application and other factors weighing against making interim order - Application dismissed

WILLIAM NEILSON LTD.; RE MILK AND BREAD DRIVERS, DAIRY EMPLOYEES CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647 ..... (Mar.) 326

Intimidation and Coercion - Certification - Certification Where Act Contravened - Construction Industry - Discharge - Discharge for Union Activity - Interference in Trade Unions - Remedies - Unfair Labour Practice - Employer violating Act in threatening and intimidating one employee with respect to union membership and in laying off second employee because of his union activity - Reinstatement with compensation ordered - Board determining that as result of employer's violations true wishes of employees unlikely to be ascertained - Union certified under section 9.2 of the Act

BASILE INTERIORS LTD.; RE PAT, LOCAL 1494 ..... (Aug.) 963

Intimidation and Coercion - Certification - Charges - Evidence - Fraud - Membership Evidence - Petition - Practice and Procedure - Timeliness - Union's certification application sent by registered mail on August 11 and employees' petition received by private courier at Board's office on August 12 - Rules of Procedure providing that date of filing is date document

received by Board or, if mailed by registered mail, date on which its mailed as verified by Post Office - Combined operation of section 8(4) of the Act and Board's Rules making petition untimely - Board dismissing objecting employees' allegations concerning union's collection of membership evidence for failure to make out *prima facie* case - Board declining objecting employees' request that Board exercise its discretion under section 8(3) of the Act to order representation - Certificate issuing

LUTHERAN NURSING HOME (OWEN SOUND); RE CLC; RE ROSANNE GILLARD AND SANDRA MARSHALL ..... (Oct.)

1362

Intimidation and Coercion - Certification - Charges - Evidence - Membership Evidence - Practice and Procedure - Board declining to receive into evidence certain allegations which did not comply with Rules 14 and 16 of Board's Rules of Procedure - Board declining to receive other proffered evidence offending collateral evidence rule - Board not satisfied that allegations that union organizers had attempted to obtain membership evidence through coercion substantiated - Certificate issuing - Employer's reconsideration application dismissed

ROYALGUARD VINYL CO., A DIVISION OF ROYPLAST LIMITED; RE SAMUEL OFOSU ANSAH; RE USWA.....(Aug.)

1057

Intimidation and Coercion - Certification - Charges - Fraud - Membership Evidence - Reconsideration - Unfair Labour Practice - Following union's certification, certain employees making unfair labour practice application complaining about manner in which fellow employee collected membership evidence - Employer also seeking reconsideration of certification decision - Board hearing evidence of nine persons and resolving conflicting evidence in favour of union's witness - Board finding that employee collector did not contravene *Act* when he approached employees to obtain membership evidence - Employee collector's actions not causing Board to conclude that filed membership evidence unreliable - Applications dismissed

MADAWASKA HARDWOOD FLOORING INC.; RE IWA - CANADA .....(Mar.)

267

Intimidation and Coercion - Certification - Charges - Membership Evidence - Board finding no substance to allegations that union's conduct created "profound fear" among employees as to whether they should join union - Evidence not supporting conclusion that union collected membership evidence through intimidation or material misrepresentation - Certificate issuing

DUALEX ENTERPRISES INC., A DIVISION OF DEPCO INTERNATIONAL INCORPORATED; RE CAW-CANADA; RE GROUP OF EMPLOYEES.....(Dec.)

1641

Intimidation and Coercion - Certification - Charges - Membership Evidence - Board persuaded that allegations made not causing Board to doubt validity of membership evidence signed - Interim certificate issuing

MY COUSIN'S RESTAURANT), FJS HOLDINGS (C.O.B. AS; RE HOSPITALITY & SERVICE TRADES UNION LOCAL 261.....(Nov.)

1572

Intimidation and Coercion - Certification - Charges - Membership Evidence - Employees alleging that they had been intimidated and coerced by union organizers into signing membership evidence - Board outlining its approach when considering charges of improper conduct in collection of membership evidence - Board finding no reason in this case to doubt validity of cards submitted on behalf of employees - Certificate issuing

DAVIS DISTRIBUTING LIMITED; RE TEAMSTERS LOCAL UNION NO. 419; RE CHANDRABALLI MUSSAI AND MICHELLE MCCREADY, GROUP OF EMPLOYEES.....(Sept.)

1190

Intimidation and Coercion - Certification - Charges - Petition - Membership Evidence - UFCW applying to represent bargaining unit of grocery store's meat department employees -

Board according no weight to timely petition making reference to RWDSU and signed by employees before UFCW membership evidence collected - Board dismissing employer's allegations that membership evidence collected through intimidation and coercion - Certificate issuing

R.J. CHARTRAND HOLDINGS LIMITED C.O.B. AS CHARTRAND'S YOUR INDEPENDENT GROCER; RE UFCW, LOCAL 633; RE GROUP OF EMPLOYEES..... (Oct.) 1407

Intimidation and Coercion - Change in Working Conditions - Interference in Trade Unions - Unfair Labour Practice - Board finding that installation of video surveillance cameras in workplace motivated, at least in part, by anti-union *animus* - Installation of cameras also violating statutory freeze - Union's complaint allowed and employer directed to remove cameras forthwith

ROYALGUARD VINYL CO., A DIVISION OF ROYPLAST LIMITED; RE USWA.....(Jan.) 59

Intimidation and Coercion - Constitutional Law - Unfair Labour Practice - Hydro employee alleging various acts of intimidation by employer related to exercise of rights under the *Act* - Employer alleging that Board without jurisdiction on ground that applicant's employment relationship with Hydro governed by *Canada Labour Code* - Applicant involved in inspecting nuclear facilities - Board concluding that inspections carried on by applicant 'integral', 'vital' or 'essential' in relation to production of nuclear energy - Board concluding that applicant's employment relationship governed by federal legislation - Application dismissed

ONTARIO HYDRO; RE EUGENE KALWA; RE THE SOCIETY OF ONTARIO HYDRO PROFESSIONAL AND ADMINISTRATIVE EMPLOYEES .....(Mar.) 277

Intimidation and Coercion - Construction Industry - Discharge - Duty of Fair Referral - Duty of Fair Representation - Practice and Procedure - Unfair Labour Practice - Board dismissing objection to vice-chair sitting alone in this case - Applicant complaining of threats related to his participation in Board proceeding, union charges laid against the applicant, the refusal to permit the applicant to lay union charges against a fellow member, the failure to refer the applicant to work on certain project, the union's failure to assist him with certain grievances, his discharge, and being struck from the hiring hall referral list because of his improper expulsion from the union - Responding parties asking Board to dismiss application on grounds of undue delay - Board considering effect of delay in construction industry - Board dismissing all aspects of complaint for delay, except for allegation concerning removal of applicant from hiring hall list - Nine month delay in respect of referral issue not so long as to cause Board to decline to hear complaint

ROBERT DUMEAH; RE BSOIW LOCAL 700, K.E.W. STEEL FABRICATORS LTD. .... (June) 655

Intimidation and Coercion - Duty of Fair Referral - Remedies - Unfair Labour Practice - Applicant working as owner-operator under agreement between Pipe Line Contractors and Teamsters' union - Board concluding that union's actions in introducing rotation system, referring applicant to Deep River following lay-off from Stittsville loop, handling of applicant's grievance and various other matters not violating union's duty of fair referral - Board finding that union's refusal to allow applicant to pay union dues, renew membership and restore name to dispatch list designed to penalize him for filing complaint with the Board, contrary to section 82(2) of the *Act* - Union directed to compensate applicant for lost earnings and to restore applicant's name to dispatch list upon his tendering payment of outstanding dues

LOUIS LAUZON; RE TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 91 ..... (June) 717



Intimidation and Coercion - Employer - Interference in Trade Unions - Judicial Review - Settlement - Stay - Strike - Strike Replacement Workers - Unfair Labour Practice - "Home Cares" contracting with various "service provider" agencies, including Red Cross, to provide various therapeutic and support services to clients in their homes - Red Cross employees commencing legal strike - Home Cares arranging for other service providers to attend to clients - Union alleging breach of statutory ban on use by employer of strike replacement workers - Board not accepting union's argument that Home Cares actually true "employer" in this case or that Home Cares and service providers "acting on behalf" of Red Cross - Applications under section 73.1 and 73.2 dismissed - Board finding that letter sent to Red Cross employees suggesting that employees might lose their jobs if they commenced or stayed on strike violating the Act - Red Cross applying for judicial review on ground that subject matter of Board's unfair labour practice finding had been settled by parties and withdrawn - Red Cross seeking stay of Board's decision pending determination of judicial review application - Stay application dismissed

THE CANADIAN RED CROSS SOCIETY (ONTARIO DIVISION); RE ONTARIO LABOUR RELATIONS BOARD AND THE SERVICE EMPLOYEES INTERNATIONAL UNION, LOCALS 204 AND 532 ..... (Oct.)

1466

Intimidation and Coercion - Employer - Interference in Trade Unions - Strike - Strike Replacement Workers - Unfair Labour Practice - "Home Cares" contracting with various "service provider" agencies, including Red Cross, to provide various therapeutic and support services to clients in their homes - Red Cross employees commencing legal strike - Home Cares arranging for other service providers to attend to clients - Union alleging breach of statutory ban on use by employer of strike replacement workers - Board not accepting union's argument that Home Cares actually true "employer" in this case or that Home Cares and service providers "acting on behalf" of Red Cross - Applications under sections 73.1 and 73.2 dismissed - Board finding that letter sent to Red Cross employees suggesting that employees might lose their jobs if they commenced or stayed on strike violating the Act

RED CROSS SOCIETY ONTARIO DIVISION, THE CANADIAN, VICTORIAN ORDER OF NURSES BRANT-HALDIMAND-NORFOLK, COMCARE (CANADA) LIMITED, MED CARE PARTNERSHIP, THE VISITING HOMEMAKERS ASSOCIATION OF HAMILTON-WENTWORTH, HAMILTON-WENTWORTH HOME CARE PROGRAM - VICTORIAN ORDER OF NURSES AND VICTORIAN ORDER OF NURSES RESPITE PROGRAM, THE REGIONAL MUNICIPALITY OF HAMILTON-WENTWORTH, OLSTEN HEALTH CARE SERVICES, MEDICAL PERSONNEL POOL (HAMILTON) LTD., MOHAWK MEDICAL SERVICES, PARA-MED HEALTH SERVICES AND BRANT COUNTY HOME CARE PROGRAM, VETERANS AFFAIRS CANADA; RE S.E.I.U., LOCAL 204 AND LOCAL 532 ..... (Jan.)

34

Intimidation and Coercion - Interference in Trade Unions - Interim Relief - Remedies - Trusteeship - Unfair Labour Practice - Union Successor Status - Local 75 of Hotel employees' union purporting to disaffiliate from union - Local placed under trusteeship - Local 75 filing unfair labour practice complaint against union and named employer in connection with employer's decision to retain dues in escrow - Local 75 seeking interim order directing employer to remit dues to it - In response to Local 75's application, union filing its own unfair labour practice complaint, its own successor rights application under section 63 of the Act, and its own interim relief application - Board not persuaded that any interim order warranted at this stage - Application for interim relief dismissed

WESTBURY HOWARD JOHNSON HOTEL ["THE WESTBURY"], AND H.E.R.E. ["THE PARENT UNION"]; RE H.E.R.E., LOCAL 75 ["LOCAL 75"] ..... (Aug.)

1166

Intimidation and Coercion - Interference in Trade Unions - Interim Relief - Remedies - Unfair Labour Practice - Union seeking interim relief in connection with unfair labour practice complaint alleging that demotion of employee from group leader position violating the Act

- Board directing that employee be reinstated to his position on interim basis pending final disposition of unfair labour practice complaint

LEO SAKATA ELECTRONICS (CANADA) LTD.; RE IWA CANADA ..... (Oct.) 1359

Intimidation and Coercion - Interference in Trade Unions - Lock-Out - Strike - Strike Replacement Workers - Unfair Labour Practice - Board providing reasons for earlier bottom-line decision in respect of lock-out and violation of section 73.1 of the Act - Wearing of union T-shirts in workplace lawful activity protected by Act - Employer's refusal to allow employees wearing such T-shirts to work amounting to lock-out - Employer violating section 73.1 of the Act by using services of other employees in bargaining unit during lock-out - Board directing employer to cease and desist from using services of employees in bargaining unit so long as lock-out continuing

MISSISSAUGA HYDRO ELECTRIC COMPANY; RE IBEW, LOCAL 636..... (Oct.) 1376

Intimidation and Coercion - Interference in Trade Unions - Lock-Out - Strike - Strike Replacement Workers - Unfair Labour Practice - Wearing of union T-shirts in workplace lawful activity protected by Act - Employer's refusal to allow employees wearing such T-shirts to work amounting to lock-out - Employer violating section 73.1 of the Act by using services of other employees in bargaining unit during lock-out - Board directing employer to cease and desist from using services of employees in bargaining unit so long as lock-out continuing

MISSISSAUGA HYDRO ELECTRIC COMPANY; RE IBEW, LOCAL 636..... (July) 883

Intimidation and Coercion - Interference with Trade Unions - Unfair Labour Practice - Board finding employer's remarks to group of employees calculated to use promises to undermine union's legitimate authority as bargaining agent and thus interfering with union's representation of its members - Application allowed

PHARMAPHIL, A DIVISION OF R.P. SCHERER CANADA INC.; RE UFCW, LOCAL 175 AND 633..... (June) 770

Intimidation and Coercion - Remedies - Certification - Certification Where Act Contravened - Interference with Trade Unions - Unfair Labour Practice - Employer found to have violated Act by certain statements contained in bulletins distributed to employees, certain statements made by employer at meeting with employees, and by certain statements made to two employees about soliciting support for the union - Board directing employer to post and distribute Board notice to employees, to permit union access to plant during working hours for purpose of convening meeting with employees out of presence of members of management, and to rescind written warnings given to two employees - Board declining to certify union under section 9.2 of the Act - Representation vote directed

CANAC KITCHENS LIMITED; RE CJA ..... (Aug.) 972

Judicial Review - Abandonment - Accreditation - Bargaining Rights - Collective Agreement - Construction Industry - Construction Industry Grievance - Employer Support - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractors Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Respondent applying for judicial review on ground that full Board meeting violated rules of natural justice and seeking interim relief - Motions Court judge granting order compelling attendance of chair, vice-chair and registrar before special examiner to obtain information respecting Board procedures - Motion to

produce various reports and documents dismissed - Full panel of Divisional Court allowing appeal and setting aside order of motions court judge

ELLIS-DON LIMITED; RE THE ONTARIO LABOUR RELATIONS BOARD AND IBEW, LOCAL 894.....(Jan.)

113

Judicial Review - Abandonment - Accreditation - Bargaining Rights - Collective Agreement - Construction Industry - Construction Industry Grievance - Employer Support - Natural Justice - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractors Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Respondent applying for judicial review on ground that full Board meeting violated rules of natural justice and seeking interim relief - Motions Court judge granting order compelling attendance of chair, vice-chair and registrar before special examiner to obtain information respecting Board procedures - Motion to produce various reports and documents dismissed - Full panel of Divisional Court allowing appeal and setting aside order of motions court judge - Court of Appeal dismissing motion for leave to appeal

ELLIS-DON LIMITED; THE OLRB AND IBEW, LOCAL 894..... (June)

801

Judicial Review - Adjournment - Construction Industry - Evidence - Jurisdictional Dispute - Natural Justice - Practice and Procedure - Witness - Carpenters' and Sheet Metal Workers' unions disputing assignment of work in connection with handling, distribution, rigging, erection and installation of sheet metal siding onto wood - Board confirming assignment to members of Sheet Metal Workers' union - Board summarizing various evidentiary and procedural rulings made during lengthy proceeding - Board not allowing Carpenters' union to call area practice evidence to the extent that its materials had not been properly particularized - Board not permitting Sheet Metal Workers' union to call witness who had already once testified - Other than in reply, a party should not be permitted to recall a witness except in extraordinary circumstances - Carpenters' union moving to terminate proceedings after 10 days of hearing following settlement of its grievance (which constituted initial demand for work in dispute) - Motion to terminate proceedings dismissed - Board noting that jurisdictional dispute proceedings should not generally be terminated after hearing on the merits has begun where it is clear that jurisdictional dispute still exists - Carpenters' union applying for judicial review on grounds of alleged denial of natural justice - Divisional Court dismissing application with costs

VIC WEST STEEL LIMITED, ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE, SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL 539 AND OLRB; RE CJA, LOCAL 1256..... (June)

803

Judicial Review - Bargaining Rights - Crown Transfer - Ministry of Correctional Services contracting with several community organizations to provide various services to inmates including discharge planning, cultural liaison, and counselling - Whether each contract constituting transfer of part of Crown's "undertaking" to the community agency - Board not persuaded that the right to perform particular services created by subcontract is "part" of Crown's "undertaking" to which bargaining rights attach or which create successor ship on



execution of contract - Crown transfer application dismissed by Board - Divisional Court dismissing union's application for judicial review

ST. LEONARD'S SOCIETY OF METROPOLITAN TORONTO AND COMMUNITY LIAISON SERVICES AND BLACK INMATES AND FRIENDS ASSEMBLY, THE CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF CORRECTIONAL SERVICES AND; RE OPSEU .....(Jan.)

126

Judicial Review - Bargaining Unit - Certification - Practice and Procedure - Stay - Following participation in certification waiver programme and after agreeing on a number of issues related to union's certification application (including bargaining unit description), parties apparently agreeing to waive hearing - Legal identity of employer only issue apparently outstanding - Employer subsequently retaining new counsel, seeking to file additional materials and advising Board of its intention to attend officer meeting and Board hearing - Employer asking Board to find appropriate bargaining unit to be one other than that which had earlier been agreed to by the parties - Employer relying on fact that Waiver of Hearing Form A-5 not submitted for proposition that it had not agreed to waive hearing - Board not permitting employer to resile from agreement on bargaining unit - Board finding agreed-upon unit appropriate - Board indicating that it will consider employer request, if made, for hearing on question of legal identity of employer - Employer applying for judicial review on ground that Board declined jurisdiction to determine appropriate bargaining unit - Employer applying for stay pending judicial review - Stay application dismissed by Divisional Court

GLAZIER MEDICAL CENTRE; RE ONA AND THE OLRB .....(June)

802

Judicial Review - Constitutional Law - Construction Industry - Construction Industry Grievance - Board dismissing employer's submission that construction of banks by bank employees within sphere of federal labour relations - Board assuming jurisdiction to deal with grievance - Bank seeking judicial review - Divisional Court finding construction of new bank building to be ordinary construction activity and within provincial jurisdiction - Judicial review application dismissed - Motion for leave to appeal dismissed by Court of Appeal - Application for leave to appeal to Supreme Court of Canada dismissed

TORONTO-DOMINION BANK, THE; RE CJA, LOCAL 785, ONTARIO LABOUR RELATIONS BOARD, ATTORNEY GENERAL OF CANADA AND ATTORNEY GENERAL OF ONTARIO .....(Jan.)

127

Judicial Review - Construction Industry - Construction Industry Grievance - Settlement - Labour-Management Relations Committee hearing grievance at Step 3 of grievance procedure and issuing decision - Union submitting that matter in dispute thereby settled pursuant to grievance procedure set out in collective agreement - Board upholding union's preliminary motion, concluding that grievance settled, and directing employer to comply with terms of settlement - Employer's application for judicial review dismissed by Divisional Court

E.S. FOX LIMITED; RE MILLWRIGHT DISTRICT COUNCIL OF ONTARIO ON ITS OWN BEHALF AND ON BEHALF OF ITS LOCAL 1007 AND OLRB .....(Nov.)

1609

Judicial Review - Employer - Interference in Trade Unions - Intimidation and Coercion - Settlement - Stay - Strike - Strike Replacement Workers - Unfair Labour Practice - "Home Cares" contracting with various "service provider" agencies, including Red Cross, to provide various therapeutic and support services to clients in their homes - Red Cross employees commencing legal strike - Home Cares arranging for other service providers to attend to clients - Union alleging breach of statutory ban on use by employer of strike replacement workers - Board not accepting union's argument that Home Cares actually true "employer" in this case or that Home Cares and service providers "acting on behalf" of Red Cross - Applications under section 73.1 and 73.2 dismissed - Board finding that letter sent to Red Cross employees suggesting that employees might lose their jobs if they commenced or

stayed on strike violating the Act - Red Cross applying for judicial review on ground that subject matter of Board's unfair labour practice finding had been settled by parties and withdrawn - Red Cross seeking stay of Board's decision pending determination of judicial review application - Stay application dismissed

THE CANADIAN RED CROSS SOCIETY (ONTARIO DIVISION); RE ONTARIO LABOUR RELATIONS BOARD AND THE SERVICE EMPLOYEES INTERNATIONAL UNION, LOCALS 204 AND 532 ..... (Oct.)

1466

Judicial Review - Sale of a Business - Unfair Labour Practice - Respondent appointed by Ontario Court (General Division) as receiver and manager of nursing home in December 1991 - Union complaining that respondent failing to adhere to collective agreement between union and nursing home and refusing to bargain with union - Board finding respondent to be successor employer for purposes of the Act - Board remitting issues to parties for consideration and remaining seized - Receiver's application for judicial review dismissed by Divisional Court

DELOITTE & TOUCHE INC., IN ITS CAPACITY AS COURT APPOINTED RECEIVER AND MANAGER OF OTTAWA NURSING CENTRE NURSING HOME, AND NOT IN ITS PERSONAL CAPACITY; RE CUPE, LOCAL 1343 ... (Nov.)

1608

Jurisdictional Dispute - Adjournment - Construction Industry - Construction Industry Grievance - Parties - Practice and Procedure - Board rejecting employer's motion that Board defer consideration of grievance to allow it to file jurisdictional dispute complaint - Board noting that parties had not addressed whether employer's unrepresented labourers, Labourers' union, or other contractors have status to intervene in the proceeding

SARNIA WOLVERINE MANUFACTURING LTD.; RE UA, LOCAL UNION 663 ..... (Jan.)

68

Jurisdictional Dispute - Adjournment - Construction Industry - Evidence - Judicial Review - Natural Justice - Practice and Procedure - Witness - Carpenters' and Sheet Metal Workers' unions disputing assignment of work in connection with handling, distribution, rigging, erection and installation of sheet metal siding onto wood - Board confirming assignment to members of Sheet Metal Workers' union - Board summarizing various evidentiary and procedural rulings made during lengthy proceeding - Board not allowing Carpenters' union to call area practice evidence to the extent that its materials had not been properly particularized - Board not permitting Sheet Metal Workers' union to call witness who had already once testified - Other than in reply, a party should not be permitted to recall a witness except in extraordinary circumstances - Carpenters' union moving to terminate proceedings after 10 days of hearing following settlement of its grievance (which constituted initial demand for work in dispute) - Motion to terminate proceedings dismissed - Board noting that jurisdictional dispute proceedings should not generally be terminated after hearing on the merits has begun where it is clear that jurisdictional dispute still exists - Carpenters' union applying for judicial review on grounds of alleged denial of natural justice - Divisional Court dismissing application with costs

VIC WEST STEEL LIMITED, ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE, SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL 539 AND OLRB; RE CJA, LOCAL 1256 ..... (June)

803

Jurisdictional Dispute - Adjournment Construction Industry - Construction Industry Grievance - Practice and Procedure - Ironworkers' union grieving failure to assign its members certain work - Millwrights' union seeking to intervene - Millwrights' submitting that grievance inarbitrable because Ironworkers' asking Board to enforce order made in *The State Group* case and because dispute raised in grievance is jurisdictional dispute - Board adjourning section

126 proceeding pending filing and disposition of jurisdictional dispute complaint under section 93 of the *Act*

E.S. FOX LIMITED, ONTARIO ERECTORS ASSOCIATION INCORPORATED; RE BSOIW, LOCAL 700; RE MILLWRIGHTS DISTRICT COUNCIL OF ONTARIO ON ITS OWN BEHALF AND ON BEHALF OF ITS LOCAL 1244 ..... (May) 543

Jurisdictional Dispute - Construction Industry - Boilermakers' union and other unions disputing assignment of work in connection with demolition and removal of inactive heavy water plant in circumstances where the materials/equipment/facility demolished for scrap - Board confirming assignment of work in dispute to Labourers' union

MULTIDEM INC., EPSCA, DOMINION METAL AND REFINING WORKS LTD., LIUNA, LOCAL, 1059; RE BBF, LOCAL 128; INTERNATIONAL BROTHERHOOD OF OPERATING ENGINEERS, LOCAL 793; TEAMSTERS' LOCAL 230; BSOIW, LOCAL 736; THE IBEW ELECTRICAL POWER SYSTEMS CONSTRUCTION COUNCIL OF ONTARIO REPRESENTING THE FOLLOWING AFFILIATED LOCAL UNIONS: 105, 115, 120, 303, 353, 402, 532, 586, 773, 804, 894, 1687, 1739 AND 1788; UA, LOCAL 527..... (Feb.) 166

Jurisdictional Dispute - Construction Industry - IBEW and CUPE disputing assignment of electrical construction work performed on 115KV transmission line between Ontario Hydro transmission stations - Board determining that work ought to have been assigned to IBEW

ONTARIO HYDRO AND EPSCA AND POWER WORKERS' UNION; RE IBEW, LOCAL 1788..... (Oct.) 1404

Jurisdictional Dispute - Construction Industry - Labourers' union and IBEW disputing assignment of work in connection with installation of Trenwa duct system - Board directing that disputed work be assigned to IBEW in Board Area No. 2

ADAM CLARK COMPANY LTD., I.B.E.W., LOCAL 530 AND; RE L.I.U.N.A., LOCAL 1089.....(Jan.) 1

Jurisdictional Dispute - Construction Industry - Natural Justice - Practice and Procedure - Reconsideration - Labourers' union and Carpenters' union disputing assignment of work related to fabrication, installation and dismantling of bulkheads in Board Area 6 in ICI sector - Board directing that work be assigned to Carpenters - Labourers' union requesting reconsideration on various grounds, including assertion that "consultation" procedure violating rules of natural justice - Application for reconsideration dismissed

ROBERTSON YATES CORPORATION LIMITED, UNITED FLOOR COMPANY LTD., CJA, LOCAL 785; LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL, LOCALS 506 AND 1081..... (Oct.) 1411

Jurisdictional Dispute - Construction Industry - Practice and Procedure - Board reviewing general situation of jurisdictional disputes involving Ontario Hydro, CUPE Local 1000 and various construction unions with a view to constructing more economical, expeditious and perhaps global resolution of the disputes - Board neither processing nor scheduling new applications pending completion of its review

ONTARIO HYDRO, ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION AND; RE IBEW, LOCAL 1788, CUPE, LOCAL 1000 ..... (May) 592

Jurisdictional Dispute - Construction Industry - Practice and Procedure - Labourers' union opposing Operative Plasterers' union's request to withdraw its jurisdictional dispute application - Board expressing view that it should hear complaints where dispute over correct assignment



- of the work continues to exist, unless there are compelling reasons not to do so - Board persuaded that leave to withdraw complaint should not be granted
- DAFOE FLOOR CONCRETE CONSTRUCTION LTD., LIUNA, LOCAL 1059 AND;  
RE OPCM, LOCAL 598..... (July) 836
- Jurisdictional Dispute - Construction Industry - Sheet metal workers' union and Carpenters' union disputing assignment of work in connection with removal, handling and installation of plywood and wood blocking for flashing as part of re-roofing contract at paper mill in Cornwall - Board confirming assignment of disputed work to Sheet metal workers' union
- AMHERST ROOFING AND SHEETMETAL LTD., CJA, LOCAL 93; RE ONTARIO SHEET METAL WORKERS' & ROOFERS' CONFERENCE, SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 269 ..... (Apr.) 339
- Jurisdictional Dispute - Construction Industry - Sheet Metal Workers' union and Plumbers' union disputing assignment of work in connection with handling and installation of air handling units in Board Area 18 - Employer assigning work exclusively to Plumbers - Sheet Metal Workers asserting that work in dispute should have been done by composite crew of Sheet Metal Workers and Plumbers - Trade agreement favouring claim of Sheet Metal Workers, but prevailing practice in board area not consistent with trade agreement - Sheet Metal Workers having no collective bargaining relationship with employer - Board finding no reason to interfere with employer's assignment of work - Complaint dismissed
- GROFF & ASSOCIATES LTD. AND UA, LOCAL 599; RE SMW, LOCAL 30..... (July) 846
- Jurisdictional Dispute - Construction Industry - Sheet metal workers' union and Plumbers' union disputing assignment of work in connection with piping for dust control system - Board satisfied that work correctly assigned to Sheet metal workers' union
- E.S. FOX LIMITED, UA, LOCAL UNION 508; RE ONTARIO SHEET METAL WORKERS' & ROOFERS' CONFERENCE, SMW, LOCAL 397..... (May) 549
- Jurisdictional Dispute - Construction Industry - Sheetmetal workers' union and carpenters' union disputing assignment of work on wall system for housing project - Board finding that handling and installation of bitheruthene waterproofing membrane, z-bar and insulation at project in Thunder Bay properly assigned to sheetmetal workers
- LAKEHEAD ROOFING AND SHEET METAL CO. (1983) LTD., CJA, LOCAL 1669; RE ONTARIO SHEET METAL WORKERS' & ROOFERS' CONFERENCE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 397..... (Mar.) 265
- Jurisdictional Dispute - Construction Industry - Various unions, including Labourers' union, disputing assignment of certain clean up and "housekeeping" work on construction sites in Oakville and Toronto - Board distinguishing between removal, daily clean up, periodic general clean up and final clean up and between trade materials and debris - Board directing that all future clean up work on job sites in question be assigned in accordance with its direction
- ELLIS DON LTD., GROFF AND ASSOCIATES LTD., AND THE STATE GROUP LTD., LIUNA, LOCAL 506; RE UA, LOCAL 46 AND IBEW, LOCAL 353; RE UA, LOCAL 853, HFIA, LOCAL 95..... (Sept.) 1222
- Jurisdictional Dispute - IATSE and Labourers' union disputing assignment of work in connection with erection, setting in place and dismantling of risers on stage for certain shows at Canadian National Exhibition - Board declaring that work in dispute should have been assigned to IATSE members and making order binding parties for future jobs involving the disputed work pursuant to section 93(2) of the *Act*
- ELITE SHOW SERVICES; IATSE, LOCAL 58, LIUNA, LOCAL 506, KLANSIDE INC. AND; RE BOARD OF GOVERNORS OF EXHIBITION PLACE ..... (Apr.) 381

Jurisdictional Dispute - ONA and AAHPO disputing work jurisdiction in connection with Health Promoter position at board of health - Board applying <i>Eastern Ontario Health Unit</i> case - Board determining and directing that where employer uses nurses to fill Health Promoter position, that position should be included in ONA bargaining unit - Where employer uses other than nurses to fill Health Promoter position, that position should be included in AAHPO unit	
THE BOARD OF HEALTH FOR THE PETERBOROUGH COUNTY-CITY HEALTH UNIT; RE THE ASSOCIATION OF ALLIED HEALTH PROFESSIONALS: ONTARIO, AND ONTARIO NURSES' ASSOCIATION.....(Mar.)	292
Jurisdictional Dispute - ONA submitting that one of two persons occupying newly created Health Promotion Officers positions, both of which had been assigned by employer to CUPE bargaining unit, should be reassigned by Board to ONA's bargaining unit - Board determining that matter properly the subject of arbitration and not the subject of jurisdictional dispute - Application dismissed	
LAMBTON COUNTY HEALTH UNIT AND CUPE, LOCAL 1291; RE ONA.... (Sept.)	1239
Jurisdictional Dispute - Practice and Procedure - OSSTF alleging that work of occasional teachers being improperly assigned to "study room supervisors" represented by CUPE - Board rejecting CUPE's argument that Minister of Education having exclusive jurisdiction to resolve dispute involving alleged contravention of <i>Education Act</i> - Board not persuaded to exercise its discretion not to inquire into complaint because of greater expertise of alternative decision-maker - Board directing the filing of supplementary materials, including witness lists and detailed outline of evidence witnesses intend to give	
KENT COUNTY BOARD OF EDUCATION AND THE CUPE, LOCAL 2214; RE ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION ..... (June)	701
Just Cause - Discharge - Unfair Labour Practice - Board finding that some discipline warranted for employee's carelessness, but that other allegations not made out on the evidence - Employer found to have disciplined and discharged employee without just cause contrary to section 81.2 of the Act - Written warning substituted for discharge and for various other disciplinary notations - Reinstatement with compensation ordered - Application allowed	
OMBUDSMAN ONTARIO; RE OPEIU, LOCAL 343 ..... (Dec.)	1679
Lock-Out - Duty to Bargain in Good Faith - Unfair Labour Practice - Following rejection by union of employer's final offer, employer locking-out employees and subsequently permanently closing business - Union then accepting offer, but employer taking position that offer no longer available - Board dismissing complaint that employer bargaining in bad faith by refusing to execute collective agreement on terms set out in its final offer - Board not satisfied that employer's lock-out of employees and subsequent closing unlawfully motivated - Complaints dismissed	
THE PEEL COUNTY RESTAURANT; CTCU..... (Feb.)	186
Lock-Out - Interference in Trade Unions - Intimidation and Coercion - Strike - Strike Replacement Workers - Unfair Labour Practice - Board providing reasons for earlier bottom-line decision in respect of lock-out and violation of section 73.1 of the Act - Wearing of union T-shirts in workplace lawful activity protected by Act - Employer's refusal to allow employees wearing such T-shirts to work amounting to lock-out - Employer violating section 73.1 of the Act by using services of other employees in bargaining unit during lock-out - Board directing employer to cease and desist from using services of employees in bargaining unit so long as lock-out continuing	
MISSISSAUGA HYDRO ELECTRIC COMPANY; RE IBEW, LOCAL 636..... (Oct.)	1376
Lock-Out - Interference in Trade Unions - Intimidation and Coercion - Strike - Strike Replace-	

ment Workers - Unfair Labour Practice - Wearing of union T-shirts in workplace lawful activity protected by *Act* - Employer's refusal to allow employees wearing such T-shirts to work amounting to lock-out - Employer violating section 73.1 of the *Act* by using services of other employees in bargaining unit during lock-out - Board directing employer to cease and desist from using services of employees in bargaining unit so long as lock-out continuing

MISSISSAUGA HYDRO ELECTRIC COMPANY; RE IBEW, LOCAL 636..... (July)

883

Membership Evidence - Bargaining Unit - Certification - Constitutional Law - Charter of Rights and Freedoms - Employee - Board determining that section 8(4) of the *Act* not violating freedoms of expression, association and right to equal treatment set out in *Charter* - Board dismissing employees' objections to validity of trade union's membership evidence - Board finding union's proposed "all employee" unit appropriate and rejecting employer's assertion that the retail and service components of its business so distinct that employees in those components not sharing community of interests - Board finding "hardware department manager" to be "employee" within meaning of the *Act* - Certificate issuing

KEN BODNAR ENTERPRISES INC.; RE USWA; RE GROUP OF EMPLOYEES..... (June)

688

Membership Evidence - Bargaining Unit - Certification - Employer operating restaurant in downtown Ottawa - Union seeking municipality-wide bargaining unit - Employer proposing site-specific unit - Board finding union's proposed unit appropriate - Union submitting card bearing no indication as to date on which it was signed - Board hearing evidence with respect to circumstances of signature on membership evidence and satisfying itself that card signed within six month period proceeding application date - Certificate issuing

MARCHELINO RESTAURANTS, MARCHELINO RESTAURANTS LTD. C.O.B. AS; RE USWA..... (Sept.)

1240

Membership Evidence - Certification - Charges - Certain employees alleging improprieties in collection of membership evidence by union - Board satisfied that allegations not impugning or casting doubt on membership evidence - Board rejecting evidence by employee to effect that she did not know that she was signing application for union membership when signing union card - Certificate issuing

ROY AYRANTO SALES LIMITED; RE USWA; RE GROUP OF EMPLOYEES..... (Mar.)

285

Membership Evidence - Certification - Charges - Employee - Employer Support - Evidence - Board determining that employee who initiated union organizing campaign not managerial nor employed in position confidential to labour relations and that section 13 of the *Act* having no application - Evidence not indicating that membership evidence unreliable as indicator that more than 55% of employees in bargaining unit had applied to be union members at date of application - Certificate issuing

BANNERMAN ENTERPRISES INC.; RE USWA; RE GROUP OF EMPLOYEES..... (Nov.)

1489

Membership Evidence - Certification - Charges - Evidence - Fraud - Intimidation and Coercion - Petition - Practice and Procedure - Timeliness - Union's certification application sent by registered mail on August 11 and employees' petition received by private courier at Board's office on August 12 - Rules of Procedure providing that date of filing is date document received by Board or, if mailed by registered mail, date on which it is mailed as verified by Post Office - Combined operation of section 8(4) of the *Act* and Board's Rules making petition untimely - Board dismissing objecting employees' allegations concerning union's collection of membership evidence for failure to make out *prima facie* case - Board declining



objecting employees' request that Board exercise its discretion under section 8(3) of the Act to order representation - Certificate issuing

LUTHERAN NURSING HOME (OWEN SOUND); RE CLC; RE ROSANNE GILLARD AND SANDRA MARSHALL ..... (Oct.) 1362

Membership Evidence - Certification - Charges - Evidence - Intimidation and Coercion - Practice and Procedure - Board declining to receive into evidence certain allegations which did not comply with Rules 14 and 16 of Board's Rules of Procedure - Board declining to receive other proffered evidence offending collateral evidence rule - Board not satisfied that allegations that union organizers had attempted to obtain membership evidence through coercion substantiated - Certificate issuing - Employer's reconsideration application dismissed

ROYALGUARD VINYL CO., A DIVISION OF ROYPLAST LIMITED; RE SAMUEL OFOSU ANSAH; RE USWA.....(Aug.) 1057

Membership Evidence - Certification - Charges - Intimidation and Coercion - Board finding no substance to allegations that union's conduct created "profound fear" among employees as to whether they should join union - Evidence not supporting conclusion that union collected membership evidence through intimidation or material misrepresentation - Certificate issuing

DUALEX ENTERPRISES INC., A DIVISION OF DEPCO INTERNATIONAL INCORPORATED; RE CAW-CANADA; RE GROUP OF EMPLOYEES..... (Dec.) 1641

Membership Evidence - Certification - Charges - Intimidation and Coercion - Board persuaded that allegations made not causing Board to doubt validity of membership evidence signed - Interim certificate issuing

MY COUSIN'S RESTAURANT), FJS HOLDINGS (C.O.B. AS; RE HOSPITALITY & SERVICE TRADES UNION LOCAL 261 ..... (Nov.) 1572

Membership Evidence - Certification - Charges - Intimidation and Coercion - Employees alleging that they had been intimidated and coerced by union organizers into signing membership evidence - Board outlining its approach when considering charges of improper conduct in collection of membership evidence - Board finding no reason in this case to doubt validity of cards submitted on behalf of employees - Certificate issuing

DAVIS DISTRIBUTING LIMITED; RE TEAMSTERS LOCAL UNION NO. 419; RE CHANDRABALLI MUSSAI AND MICHELLE MCCREADY, GROUP OF EMPLOYEES ..... (Sept.) 1190

Membership Evidence - Certification - Charges - Intimidation and Coercion - Fraud - Reconsideration - Unfair Labour Practice - Following union's certification, certain employees making unfair labour practice application complaining about manner in which fellow employee collected membership evidence - Employer also seeking reconsideration of certification decision - Board hearing evidence of nine persons and resolving conflicting evidence in favour of union's witness - Board finding that employee collector did not contravene *Act* when he approached employees to obtain membership evidence - Employee collector's actions not causing Board to conclude that filed membership evidence unreliable - Applications dismissed

MADAWASKA HARDWOOD FLOORING INC.; RE IWA - CANADA ..... (Mar.) 267

Membership Evidence - Certification - Charges - Intimidation and Coercion - Petition - UFCW applying to represent bargaining unit of grocery store's meat department employees - Board according no weight to timely petition making reference to RWDSU and signed by employees before UFCW membership evidence collected - Board dismissing employer's

allegations that membership evidence collected through intimidation and coercion - Certificate issuing

R.J. CHARTRAND HOLDINGS LIMITED C.O.B. AS CHARTRAND'S YOUR INDEPENDENT GROCER; RE UFCW, LOCAL 633; RE GROUP OF EMPLOYEES..... (Oct.)

1407

Membership Evidence - Certification - Construction Industry - Reconsideration - Settlement - Union certified after entering into minutes of settlement with employer regarding description of bargaining unit and list of employees at work on application date - Employer seeking reconsideration of certification decision and relying on various grounds, including assertion that it had not received legal advice prior to signing settlement document, that it included specimen signatures for only 4 of 5 employees on the list and that it did so only after the terminal date - Employer also alleging non-sign - Board finding no basis for doubting reliability of membership evidence filed or for reconsidering its decision on any other basis - Reconsideration application dismissed

MARLI MECHANICAL LTD.; RE UA, LOCAL UNION 46 ..... (June)

725

Membership Evidence - Certification - Evidence - Form A-4 declarant disclosing that ten membership cards received by mail and that no additional steps taken to verify membership evidence - Board not prepared to give full evidentiary weight to mailed membership cards where declarant's only basis for asserting that cards signed by persons indicated on them is declarant's knowledge that cards received at union office in sealed business reply envelopes on specified dates, that the envelopes were delivered to desk of receiver on those dates, and that receiver opened the envelopes personally and signed cards on those dates - Board directing taking of representation vote

SEEBURN DIVISION OF VENTRA GROUP INC.; RE USWA ..... (Nov.)

1585

Natural Justice - Abandonment - Accreditation - Bargaining Rights - Collective Agreement - Construction Industry - Construction Industry Grievance - Employer Support - Judicial Review - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractors Association not signifying abandonment of bargaining rights - Respondent bound by provincial ICI agreement - Grievance allowed - Respondent applying for judicial review on ground that full Board meeting violated rules of natural justice and seeking interim relief - Motions Court judge granting order compelling attendance of chair, vice-chair and registrar before special examiner to obtain information respecting Board procedures - Motion to produce various reports and documents dismissed - Full panel of Divisional Court allowing appeal and setting aside order of motions court judge

ELLIS-DON LIMITED; RE THE ONTARIO LABOUR RELATIONS BOARD AND IBEW, LOCAL 894..... (Jan.)

113

Natural Justice - Abandonment - Accreditation - Bargaining Rights - Collective Agreement - Construction Industry - Construction Industry Grievance - Employer Support - Judicial Review - Whether respondent bound by provincial ICI agreement - 1962 working agreement signed by person with actual authority and not under duress - Board affirming and applying reasoning in *Nicholls-Radtke* case - Agreement valid at the time it was signed - Agreement not limited to six civil trades - Respondent's submission on employer support rejected - Union's withdrawal of 1980 grievance not giving rise to estoppel - Union's failure to include respondent on Schedule "F" in connection with 1975 accreditation of Electrical Contractors Association not signifying abandonment of bargaining rights - Respondent

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ELLIS-DON LIMITED; THE OLRB AND IBEW, LOCAL 894..... (June) 801

Natural Justice - Adjournment - Construction Industry - Evidence - Judicial Review - Jurisdictional Dispute - Practice and Procedure - Witness - Carpenters' and Sheet Metal Workers' unions disputing assignment of work in connection with handling, distribution, rigging, erection and installation of sheet metal siding onto wood - Board confirming assignment to members of Sheet Metal Workers' union - Board summarizing various evidentiary and procedural rulings made during lengthy proceeding - Board not allowing Carpenters' union to call area practice evidence to the extent that its materials had not been properly particularized - Board not permitting Sheet Metal Workers' union to call witness who had already once testified - Other than in reply, a party should not be permitted to recall a witness except in extraordinary circumstances - Carpenters' union moving to terminate proceedings after 10 days of hearing following settlement of its grievance (which constituted initial demand for work in dispute) - Motion to terminate proceedings dismissed - Board noting that jurisdictional dispute proceedings should not generally be terminated after hearing on the merits has begun where it is clear that jurisdictional dispute still exists - Carpenters' union applying for judicial review on grounds of alleged denial of natural justice - Divisional Court dismissing application with costs

VIC WEST STEEL LIMITED, ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE, SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL 539 AND OLRB; RE CJA, LOCAL 1256..... (June) 803

Natural Justice - Certification - Change in Working Conditions - Practice and Procedure - Sale of a Business - Unfair Labour Practice - Union alleging that employer violating statutory freeze - Employer acknowledging its status as "successor employer" by virtue of section 64.2 of the *Act*, but arguing that Board ought to dismiss complaint due to union's 3 1/2 month delay in bringing complaint - Employer also submitting that statutory freeze not applying to it because it never received notice of union's certification application - Board declining to dismiss for delay and finding that statutory freeze applying to successor employer under section 64(3) of the *Act* - Employer's preliminary motions dismissed

GROUP 4 C.P.S. LIMITED; RE USWA..... (Apr.) 400

Natural Justice - Construction Industry - Jurisdictional Dispute - Practice and Procedure - Reconsideration Labourers' union and Carpenters' union disputing assignment of work related to fabrication, installation and dismantling of bulkheads in Board Area 6 in ICI sector - Board directing that work be assigned to Carpenters - Labourers' union requesting reconsideration on various grounds, including assertion that "consultation" procedure violating rules of natural justice - Application for reconsideration dismissed

ROBERTSON YATES CORPORATION LIMITED, UNITED FLOOR COMPANY LTD., CJA, LOCAL 785; LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL, LOCALS 506 AND 1081..... (Oct.) 1411

Parties - Adjournment - Construction Industry - Construction Industry Grievance - Jurisdictional Dispute - Practice and Procedure - Board rejecting employer's motion that Board defer consideration of grievance to allow it to file jurisdictional dispute complaint - Board noting



that parties had not addressed whether employer's unrepresented labourers, Labourers' union, or other contractors have status to intervene in the proceeding

SARNIA WOLVERINE MANUFACTURING LTD.; RE UA, LOCAL UNION  
663 .....(Jan.)

68

Petition - Bargaining Unit - Certification - Employer operating separate 'electrical' and 'bottle cap' divisions out of separate buildings with separate street addresses on one site - Union applying for certification and proposing bargaining unit including employees of both divisions - Employer taking position that separate units appropriate - Board not satisfied that more comprehensive unit would cause serious labour relations problems - Union's proposed unit found appropriate - Board not satisfied that petition reflecting voluntary wishes of the employees who signed them - Certificate issuing

INSULEC LTD. RE COMMUNICATIONS ENERGY, AND PAPERWORKERS  
UNION OF CANADA; RE GROUP OF OBJECTING EMPLOYEES .....(Mar.)

254

Petition - Certification - Charges - Evidence - Fraud - Intimidation and Coercion - Membership Evidence - Practice and Procedure - Timeliness - Union's certification application sent by registered mail on August 11 and employees' petition received by private courier at Board's office on August 12 - Rules of Procedure providing that date of filing is date document received by Board or, if mailed by registered mail, date on which it is mailed as verified by Post Office - Combined operation of section 8(4) of the Act and Board's Rules making petition untimely - Board dismissing objecting employees' allegations concerning union's collection of membership evidence for failure to make out *prima facie* case - Board declining objecting employees' request that Board exercise its discretion under section 8(3) of the Act to order representation - Certificate issuing

LUTHERAN NURSING HOME (OWEN SOUND); RE CLC; RE ROSANNE GIL-  
LARD AND SANDRA MARSHALL ..... (Oct.)

1362

Petition - Certification - Charges - Intimidation and Coercion - Membership Evidence - UFCW applying to represent bargaining unit of grocery store's meat department employees - Board according no weight to timely petition making reference to RWDSU and signed by employees before UFCW membership evidence collected - Board dismissing employer's allegations that membership evidence collected through intimidation and coercion - Certificate issuing

R.J. CHARTRAND HOLDINGS LIMITED C.O.B. AS CHARTRAND'S YOUR  
INDEPENDENT GROCER; RE UFCW, LOCAL 633; RE GROUP OF EMPLOY-  
EES..... (Oct.)

1407

Petition - Certification - Evidence - Practice and Procedure - Termination - Board ruling that employee who had been discharged contrary to the Act, prior to application to terminate union's bargaining rights, should be included on list of employees for purposes of the count - Board not giving any weight to petition sent to Board by fax - Applicant conceding that re-affirmation evidence filed by union representing voluntary expression of employee wishes - Application dismissed

MEAFORD BEAVER VALLEY COMMUNITY SUPPORT SERVICES; RE SONYA  
TER STEGE; RE OPSEU ..... (Oct.)

1375

Petition - Evidence - Practice and Procedure - Termination - Applicant not providing Board with detailed evidence of origination of petition, nor any evidence with respect to circulation of petition or continuity of carriage of petition after it was received by employee collecting signatures and then to the Board, nor any evidence of circumstances in which each and every

signature collected - Union's non-suit motion granted - Application to terminate bargaining rights dismissed

MAPLE LODGE FARMS LTD.; RE GARAGE WORKERS MAPLE LODGE FARMS LTD.; RE UFCW, LOCAL 175 ..... (Oct.) 1371

Petition - Reconsideration - Termination - Board not accepting that petitions filed representing voluntary expression of wishes of employees - Termination application dismissed - Reconsideration application dismissed

MAPLE LODGE FARMS; RE MECHANICS IN GARAGE MAPLE LODGE FARM; RE UFCW, LOCAL 175.....(Apr.) 447

Petition - Termination - Board finding that signatures on reaffirmations signifying voluntary expression of those employees in support of union - Less than forty-five per cent of employees, as of terminal date, applying for termination of bargaining rights - Application dismissed

WENDY'S RESTAURANTS OF CANADA INC.; RE REBECCA MILLAR AND STACY FENN; RE RETAIL WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF UNITED STEELWORKERS OF AMERICA, LOCAL 448... (Dec.) 1708

Picketing - Employer seeking order to restrict picketing at non-struck employer location - Picketers preventing direct access to loading docks and trucks directed to area of parking lot 225 feet away - Picketers permitting employer to unload across parking lot - Parking lot often icy and a number of employees sustaining injuries in unloading in bitter winter weather conditions - Following "staged" attempted delivery by employer alleged by union to be in breach of "deal", picketers imposing two hour interval between unloading of each truck - Board expressing view that some restriction on picketing appropriate to restrict distance over which unloading would be done to prevent unsafe situation created - Board not intervening to restrain two hour interval between unloading of trucks

THE GREAT ATLANTIC AND PACIFIC COMPANY OF CANADA LIMITED; RE UFCW, LOCALS 175 AND 633 AND SHELLY FAIR SERVICE, SCOTT CONSTABLE, PEGGY SWIFT AND DIMOCK ..... (July) 922

Picketing - Interim Relief - Remedies - Employer making application under section 11.1 of the Act for restrictions with respect to picketing - Employer seeking interim order restricting the picketing pending determination of its section 11.1 application - Balance of harm weighing against making interim order sought - Application for interim relief dismissed

THE GREAT ATLANTIC & PACIFIC COMPANY OF CANADA LIMITED; RE UFCW, LOCALS 175 AND 633 AND SHELLY FAIR SERVICE, SCOTT CONSTABLE, PEGGY SWIFT AND GARY DIMOCK.....(Aug.) 1119

Picketing - Strike - Strike Replacement Workers - Right of Access - Unfair Labour Practice - Board finding that company violated section 73.1 of the Act by using managers from non-struck stores to perform bargaining unit work at struck locations - Board making declaration and issuing cease and desist order - Employer seeking order restricting picketing at struck locations - Board analyzing provisions of section 11.1 of the Act and discussing Board's dual role in protecting statutory right to picket and in limiting exercise of that right in particular circumstances - Board finding evidence insufficient to persuade it that restrictions on picketing appropriate to prevent undue disruption of employer's operations - Application under section 11.1 of the Act dismissed

THE GREAT ATLANTIC & PACIFIC COMPANY OF CANADA LIMITED; RE UFCW, LOCALS 175 AND 633, BRIAN DONAGHY, DARRIN FAY, FRANK FORTUNATO, RICK FOX, HELMUT HALLA, ROBERT LIOTTI, DONALD LUPTON, GENE MARTIN, PAM MURDOK, PATRICIA O'DOHERTY, KATHY PAPA-CONSTANTINO, IRENE PARK AND CLIFF SKINNER ..... (Mar.) 303

Picketing - Strike - Unfair Labour Practice - Employer seeking order to restrict alleged "unlawful picketing" and give it access to main receiving doors of struck store - Statute directing Board to focus not on lawfulness of picketing, but to balance newly conferred statutory picketing rights with applicant's operations to avoid undue disruption - Board adopting functional approach - Board declining to impose restrictions on picketing and dismissing employer's application under section 11.1 of the *Act* - Board dismissing union's complaint that employer engaged in strike related misconduct contrary to section 73 of the *Act*

THE GREAT ATLANTIC & PACIFIC COMPANY OF CANADA LIMITED, THE PARTNERS OF MILLER THOMSON, BARRISTERS AND SOLICITORS, DIRK VAN DE KAMER; RE UFCW, LOCALS 175 AND 633 ..... (July)

909

Practice and Procedure - Adjournment - Bargaining Unit - Certification - Reconsideration - Employer operating private medical centre - Board earlier finding nurses' bargaining unit to be appropriate for collective bargaining and determining that ONA to be issued certificate - Employer seeking reconsideration of that decision - CAW subsequently applying for certification in respect of all-employee unit excluding nurses - In CAW application, employer proposing all-employee unit (with no exclusion for nurses) or, alternatively, one excluding medical technologists and technicians as well as nurses - Certain employees supporting employer's alternative position on bargaining unit - Board declining to adjourn CAW application pending reconsideration decision in respect of ONA application - Board finding CAW's proposed bargaining unit appropriate - Certificate issuing - Employer's reconsideration application in respect of CAW application dismissed

GLAZIER MEDICAL CENTRE; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA); RE GROUP OF EMPLOYEES..... (May)

550

Practice and Procedure - Adjournment - Construction Industry - Construction Industry Grievance - Jurisdictional Dispute - Parties - Board rejecting employer's motion that Board defer consideration of grievance to allow it to file jurisdictional dispute complaint - Board noting that parties had not addressed whether employer's unrepresented labourers, Labourers' union, or other contractors have status to intervene in the proceeding

SARNIA WOLVERINE MANUFACTURING LTD.; RE UA, LOCAL UNION 663 ..... (Jan.)

68

Practice and Procedure - Adjournment - Construction Industry - Evidence - Judicial Review - Jurisdictional Dispute - Natural Justice - Witness - Carpenters' and Sheet Metal Workers' unions disputing assignment of work in connection with handling, distribution, rigging, erection and installation of sheet metal siding onto wood - Board confirming assignment to members of Sheet Metal Workers' union - Board summarizing various evidentiary and procedural rulings made during lengthy proceeding - Board not allowing Carpenters' union to call area practice evidence to the extent that its materials had not been properly particularized - Board not permitting Sheet Metal Workers' union to call witness who had already once testified - Other than in reply, a party should not be permitted to recall a witness except in extraordinary circumstances - Carpenters' union moving to terminate proceedings after 10 days of hearing following settlement of its grievance (which constituted initial demand for work in dispute) - Motion to terminate proceedings dismissed - Board noting that jurisdictional dispute proceedings should not generally be terminated after hearing on the merits has begun where it is clear that jurisdictional dispute still exists - Carpenters' union applying for judicial review on grounds of alleged denial of natural justice - Divisional Court dismissing application with costs

VIC WEST STEEL LIMITED, ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE, SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL 539 AND OLRB; RE CJA, LOCAL 1256..... (June)

803



- Practice and Procedure - Adjudgment Construction Industry - Construction Industry Grievance - Jurisdictional Dispute - Ironworkers' union grieving failure to assign its members certain work - Millwrights' union seeking to intervene - Millwrights' submitting that grievance inarbitrable because Ironworkers' asking Board to enforce order made in *The State Group* case and because dispute raised in grievance is jurisdictional dispute - Board adjourning section 126 proceeding pending filing and disposition of jurisdictional dispute complaint under section 93 of the *Act*
- E.S. FOX LIMITED, ONTARIO ERECTORS ASSOCIATION INCORPORATED; RE BSOIW, LOCAL 700; RE MILLWRIGHTS DISTRICT COUNCIL OF ONTARIO ON ITS OWN BEHALF AND ON BEHALF OF ITS LOCAL 1244 ..... (May) 543
- Practice and Procedure - Adjustment Plan - Duty to Bargain in Good Faith - Unfair Labour Practice - Union alleging that employer breaching duty to bargain in good faith and make every reasonable effort to negotiate adjustment plan - Subsequent to hearing of complaint, and while decision pending, Board informed by employer that parties had reached collective agreement including terms on certain adjustment issues and that application rendered moot - Union disputing employer's position - Board dismissing application on grounds on mootness, and on grounds that it would serve no labour relations purpose to inquire further into application because no remedial relief would be ordered
- ONTARIO HYDRO; RE POWER WORKERS UNION, CUPE LOCAL 1000 ..... (June) 765
- Practice and Procedure - Bargaining Unit - Certification - Employee - Employee Reference - Union applying for certification and both union and employer participating in waiver process - Union making no challenges to list of employees filed by employer and Officer subsequently announcing the count - Employee list not including four Regional Managers - Union and employer subsequently agreeing on bargaining unit description, but union advising Board that parties disputing whether Regional Managers should be included in bargaining unit - Union asking Board to appoint officer under section 108(2) of the *Act* - Employer objecting to request under section 108(2) as untimely, prejudicial and an abuse of waiver and certification procedure - Board holding that union and employer bound by agreements made in waiver process, including agreements on list of employees in bargaining unit and on geographic scope of bargaining unit - Certificate issuing - Request under section 108(2) not considered by panel in context of certification application
- CAA NORTHEASTERN ONTARIO AUTO CLUB AND ONTARIO MOTOR LEAGUE WORLDWIDE TRAVEL (SUDBURY) INC.; USWA.....(Mar.) 208
- Practice and Procedure - Bargaining Unit - Certification - Employee - Representation Vote - Parties disputing status of certain individuals - Board rejecting union's submission that doctrines of *res judicata* or issue estoppel applying to prevent employer from taking position different from position taken in union's earlier certification application - Board rejecting employer's submission that in circumstances of the case, including its assertion that union's support barely over 55%, representation vote should be ordered - Board revoking appointment of Labour Relations Officer and directing hearing before panel of Board in order to expedite resolution of bargaining unit configuration issues
- REYNOLDS-LEMMERZ INDUSTRIES; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA); RE GROUP OF EMPLOYEES..... (Sept.) 1242
- Practice and Procedure - Bargaining Unit - Certification - Following participation in certification waiver programme and after agreeing on a number of issues related to union's certification application (including bargaining unit description), parties apparently agreeing to waive hearing - Legal identity of employer only issue apparently outstanding - Employer subsequently retaining new counsel, seeking to file additional materials and advising Board of its intention to attend officer meeting and Board hearing - Employer asking Board to find

appropriate bargaining unit to be one other than that which had earlier been agreed to by the parties - Employer relying on fact that Waiver of Hearing Form A-5 not submitted for proposition that it had not agreed to waive hearing - Board not permitting employer to resile from agreement on bargaining unit - Board finding agreed-upon unit appropriate - Board indicating that it will consider employer request, if made, for hearing on question of legal identity of employer

GLAZIER MEDICAL CENTRE; ONA.....(Mar.)

249

Practice and Procedure - Bargaining Unit - Certification - Judicial Review - Stay - Following participation in certification waiver programme and after agreeing on a number of issues related to union's certification application (including bargaining unit description), parties apparently agreeing to waive hearing - Legal identity of employer only issue apparently outstanding - Employer subsequently retaining new counsel, seeking to file additional materials and advising Board of its intention to attend officer meeting and Board hearing - Employer asking Board to find appropriate bargaining unit to be one other than that which had earlier been agreed to by the parties - Employer relying on fact that Waiver of Hearing Form A-5 not submitted for proposition that it had not agreed to waive hearing - Board not permitting employer to resile from agreement on bargaining unit - Board finding agreed-upon unit appropriate - Board indicating that it will consider employer request, if made, for hearing on question of legal identity of employer - Employer applying for judicial review on ground that Board declined jurisdiction to determine appropriate bargaining unit - Employer applying for stay pending judicial review - Stay application dismissed by Divisional Court

GLAZIER MEDICAL CENTRE; RE ONA AND THE OLRB ..... (June)

802

Practice and Procedure - Bargaining Unit - Combination of Bargaining Units - Remedies - Board earlier combining employer's "parts" and "manufacturing" bargaining units - Parties unable to resolve outstanding remedial issues surrounding application - Board directing parties to file further pleadings in order to facilitate hearing

FMG TIMBERJACK INC.; RE GLASS, MOLDERS, POTTERY, PLASTICS & ALLIED WORKERS INTERNATIONAL UNION ..... (Oct.)

1333

Practice and Procedure - Bargaining Unit - Combination of Bargaining Units - Remedies - Board in earlier decision combining full-time and part-time units and remaining seized to deal with further relief - Union subsequently asking Board to set matter down for hearing with respect to remedial relief - Before listing matter for hearing, Board directing union to provide it and employer with detailed description of orders or remedies requested and detailed statement of all material facts on which it relies in accordance with Rule 12 - Employer directed to reply within seven days and to supply information required by Rule 14

MARRIOTT CORPORATION (AT CARLETON UNIVERSITY); RE CUPE AND ITS LOCAL 2451.....(Aug.)

1016

Practice and Procedure - Bargaining Unit - Combination of Bargaining Units - Union seeking to combine "inside" unit and "works" unit of municipal hydro-electric commission - Board inviting employer to call its evidence first as to why application ought not to be granted - Board satisfied that combination order would reduce fragmentation and facilitate viable and stable collective bargaining without causing serious labour relations problems - Board directing that bargaining units be combined

THE HYDRO-ELECTRIC COMMISSION OF THE CITY OF OTTAWA; RE IBEW, LOCAL 636.....(Apr.)

516

Practice and Procedure - Certification - Change in Working Conditions - Natural Justice - Sale of a Business - Unfair Labour Practice - Union alleging that employer violating statutory freeze - Employer acknowledging its status as "successor employer" by virtue of section

64.2 of the *Act*, but arguing that Board ought to dismiss complaint due to union's 3 1/2 month delay in bringing complaint - Employer also submitting that statutory freeze not applying to it because it never received notice of union's certification application - Board declining to dismiss for delay and finding that statutory freeze applying to successor employer under section 64(3) of the *Act* - Employer's preliminary motions dismissed

GROUP 4 C.P.S. LIMITED; RE USWA ..... (Apr.) 400

Practice and Procedure - Certification - Charges - Evidence - Fraud - Intimidation and Coercion - Membership Evidence - Petition - Timeliness - Union's certification application sent by registered mail on August 11 and employees' petition received by private courier at Board's office on August 12 - Rules of Procedure providing that date of filing is date document received by Board or, if mailed by registered mail, date on which it is mailed as verified by Post Office - Combined operation of section 8(4) of the *Act* and Board's Rules making petition untimely - Board dismissing objecting employees' allegations concerning union's collection of membership evidence for failure to make out *prima facie* case - Board declining objecting employees' request that Board exercise its discretion under section 8(3) of the *Act* to order representation - Certificate issuing

LUTHERAN NURSING HOME (OWEN SOUND); RE CLC; RE ROSANNE GILLARD AND SANDRA MARSHALL ..... (Oct.) 1362

Practice and Procedure - Certification - Charges - Evidence - Intimidation and Coercion - Membership Evidence - Board declining to receive into evidence certain allegations which did not comply with Rules 14 and 16 of Board's Rules of Procedure - Board declining to receive other proffered evidence offending collateral evidence rule - Board not satisfied that allegations that union organizers had attempted to obtain membership evidence through coercion substantiated - Certificate issuing - Employer's reconsideration application dismissed

ROYALGUARD VINYL CO., A DIVISION OF ROYPLAST LIMITED; RE SAMUEL OFOSU ANSAH; RE USWA ..... (Aug.) 1057

Practice and Procedure - Certification - Employee - Employee Reference - Parties disputing employee status of Discharge Planning Co-Ordinator - Board in receipt of Labour Relations Officer Report including transcript of examination, plus parties' full written submissions - Board satisfied that matter can be decided on basis of material before it and without further oral hearing

NIAGARA-ON-THE-LAKE GENERAL HOSPITAL; RE ONA ..... (July) 884

Practice and Procedure - Certification - Evidence - Petition - Termination - Board ruling that employee who had been discharged contrary to the *Act*, prior to application to terminate union's bargaining rights, should be included on list of employees for purposes of the count - Board not giving any weight to petition sent to Board by fax - Applicant conceding that re-affirmation evidence filed by union representing voluntary expression of employee wishes - Application dismissed

MEAFORD BEAVER VALLEY COMMUNITY SUPPORT SERVICES; RE SONYA TER STEGE; RE OPSEU ..... (Oct.) 1375

Practice and Procedure - Certification - Interim Relief - Reconsideration - Stay - Employer applying for reconsideration of "bottom line" decision to certify union and seeking interim order staying Board's decision pending issuance of reasons for decision - Board explaining importance of avoiding delay in labour relations and practice of issuing "bottom line" decisions with reasons to follow - Balance of harm weighing against staying Board's decision - Application dismissed

ROYALGUARD VINYL CO., A DIVISION OF ROYPLAST LIMITED; RE USWA ..... (June) 775



- Practice and Procedure - Certification - Representation Vote - Union objecting to results of representation vote on grounds that certain individual ("A") ought not to have voted and that certain other individual ("B") was not on voters list, but ought to have been - Union and employer making full written representations in respect of objections - Union seeking oral hearing - Board satisfied that oral hearing unnecessary to determine objections raised by union - Board concluding that, having agreed to count A's ballot at the time of the vote, union ought not to be permitted to resile from its agreement and challenge A's status after ballots were counted - Board similarly concluding that having agreed to composition of voters' list, and having certified that all eligible voters had had opportunity to vote, union ought not to be permitted to assert that B was eligible voter - Board declining to order second representation vote - Certification application dismissed
- HIGHLAND PACKERS LIMITED; UFCW, AFL, CIO, CLC ..... (Apr.) 434
- Practice and Procedure - Construction Industry - Construction Industry Grievance - Discharge - Timeliness - Unfair Labour Practice - Board declining to dismiss grievances as untimely - Board declining to defer hearing of grievances until unfair labour practice complaint heard or until appeal to international union resolved
- DIXIE ELEVATOR LTD.; RE IUEC, LOCAL 50 ..... (May) 539
- Practice and Procedure - Construction Industry - Construction Industry Grievance - Reconsideration - Employer failing to attend Board hearing and seeking to have Board reconsider decision making various orders and declarations - Employer claiming that union official represented that Board hearing scheduled for 2:30 p.m. and not 9:30 a.m. as indicated in Board's Notice of Hearing - Board finding that party who fails to check Notice of Hearing and chooses to rely on recollection or representation of others does so at its own risk - Reconsideration application dismissed
- JOHN MAGGIO EXCAVATING LTD.; RE IUOE, LOCAL 793 ..... (Jan.) 31
- Practice and Procedure - Construction Industry - Construction Industry Grievance - Remedies - Whether certain job site in Kemptville falling within geographic area assigned to Labourers' union Local 247 under collective agreement - Board applying *M. Sullivan & Son* case and concluding that, under provincial agreement, no local union having exclusive jurisdiction over Kemptville - Employer not violating collective agreement when it hired from Local 527 rather than Local 247 - Grievance dismissed - Employer seeking costs - Board analyzing costs issue in detail and concluding that in section 126 proceedings, in absence of specific provision in collective agreement, Board has no jurisdiction to award legal costs as such - Board, however, directing Local 247 to reimburse employer for its share of section 126(4) expenses
- BELLAI BROTHERS LTD.; RE LIUNA, LOCAL 247; RE LIUNA, LOCAL 527 ..... (Jan.) 2
- Practice and Procedure - Construction Industry - Discharge - Discharge for Union Activity - Unfair Labour Practice - Board finding union's 8 1/2 month delay in bringing application undue and without justification - Application dismissed
- EASTERN WELDING, 655270 ONTARIO INC. C.O.B. AS; RE UA, LOCAL UNION 819 ..... (June) 673
- Practice and Procedure - Construction Industry - Discharge - Duty of Fair Referral - Duty of Fair Representation - Intimidation and Coercion - Unfair Labour Practice - Board dismissing objection to vice-chair sitting alone in this case - Applicant complaining of threats related to his participation in Board proceeding, union charges laid against the applicant, the refusal to permit the applicant to lay union charges against a fellow member, the failure to refer the applicant to work on certain project, the union's failure to assist him with certain grievances, his discharge, and being struck from the hiring hall referral list because of his

improper expulsion from the union - Responding parties asking Board to dismiss application on grounds of undue delay - Board considering effect of delay in construction industry - Board dismissing all aspects of complaint for delay, except for allegation concerning removal of applicant from hiring hall list - Nine month delay in respect of referral issue not so long as to cause Board to decline to hear complaint

ROBERT DUMEAH; RE BSOIW LOCAL 700, K.E.W. STEEL FABRICATORS LTD. .... (June) 655

Practice and Procedure - Construction Industry - Evidence - Related Employer - Remedies - In absence of contrary pleadings or evidence, Board deeming respondents to have accepted certain facts stated in application - Board finding five respondents engaged in related activities and finding common direction and control among four respondents - Board drawing adverse inferences from lack of production and lack of evidence produced by those respondents - Single employer declaration issuing in respect of four respondents - Board distinguishing *Golden Arm Flooring* case in respect of joint and several liability where damages awarded in earlier Board proceeding against one respondent predated relationship between it and other respondents - Application in respect of fifth respondent dismissed

CENTRAL FORMING & CONCRETE INC.; ALTRACON CONSTRUCTION LIMITED; GASPO CONSTRUCTION LIMITED; ASHWORTH ENGINEERING INC.; RE CARPENTERS AND ALLIED WORKERS, LOCAL 27, CJA ..... (July) 805

Practice and Procedure - Construction Industry - Jurisdictional Dispute - Board reviewing general situation of jurisdictional disputes involving Ontario Hydro, CUPE Local 1000 and various construction unions with a view to constructing more economical, expeditious and perhaps global resolution of the disputes - Board neither processing nor scheduling new applications pending completion of its review

ONTARIO HYDRO, ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION AND; RE IBEW, LOCAL 1788, CUPE, LOCAL 1000 ..... (May) 592

Practice and Procedure - Construction Industry - Jurisdictional Dispute - Labourers' union opposing Operative Plasterers' union's request to withdraw its jurisdictional dispute application - Board expressing view that it should hear complaints where dispute over correct assignment of the work continues to exist, unless there are compelling reasons not to do so - Board persuaded that leave to withdraw complaint should not be granted

DAFOE FLOOR CONCRETE CONSTRUCTION LTD., LIUNA, LOCAL 1059 AND; RE OPCM, LOCAL 598..... (July) 836

Practice and Procedure - Construction Industry - Jurisdictional Dispute - Natural Justice - Reconsideration - Labourers' union and Carpenters' union disputing assignment of work related to fabrication, installation and dismantling of bulkheads in Board Area 6 in ICI sector - Board directing that work be assigned to Carpenters - Labourers' union requesting reconsideration on various grounds, including assertion that "consultation" procedure violating rules of natural justice - Application for reconsideration dismissed

ROBERTSON YATES CORPORATION LIMITED, UNITED FLOOR COMPANY LTD., CJA, LOCAL 785; LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL, LOCALS 506 AND 1081..... (Oct.) 1411

Practice and Procedure - Continuation of Benefits - Unfair Labour Practice - Reconsideration - Strike - Board determining that under section 81.1 of the *Act*, union entitled to tender payments for selected benefits - Employer directed to provide union with information respecting amounts necessary to continue benefits selected by union - Employer applying for reconsideration on ground that Board without jurisdiction to make its production order and

on ground that Board was required to first determine whether union had tendered any payment before making any order or direction - Reconsideration application dismissed

PARTEK INSULATIONS LTD.; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 456 ..... (Feb.)

167

Practice and Procedure - Discharge - Discharge for Union Activity - Interim Relief - Remedies - Unfair Labour Practice - Board discussing importance of filing full and complete declarations in applications for interim relief - Board directing that two of three discharged employees be reinstated pending determination of unfair labour practice complaint - Board determining that balance of harm weighing in employer's favour in respect of third discharged employee

SHIRLON PLASTICS INC.; RE UFCW, AFL/CIO, CLC ..... (Aug.)

1086

Practice and Procedure - Discharge - Discharge for Union Activity - Unfair Labour Practice - Union filing unfair labour practice complaint under section 92.2 of the Act - Employer failing to reply to union's application, but attending at Board on day of hearing - Board not permitting employer additional time to file response - Board determining matter solely on materials filed by applicant - Application allowed and reinstatement with compensation ordered

TRICAN MATERIALS LTD. AND DUNHILL CONTRACTING LTD.; RE TEAMSTERS UNION LOCAL NO. 880 ..... (Dec.)

1703

Practice and Procedure - Duty of Fair Representation - Reconsideration - Unfair Labour Practice - Board declining applicant's request to provide him with copy of chair's hearing notes - Reconsideration application dismissed

ANTOINE A. PLENNEVAUX; LIUNA, LOCAL 1036 ..... (May)

593

Practice and Procedure - Duty of Fair Representation - Reconsideration - Unfair Labour Practice - Complainant's request for reconsideration made six months after Board's decision - Board finding no reason to abridge time limit for reconsideration requests established by Rule 85 - Application for reconsideration dismissed

REGINALD FITZGERALD; RE ALEX KEENEY, LOCAL 200, C.A.W.; RE FORD MOTOR COMPANY LTD. .... (Nov.)

1535

Practice and Procedure - Duty of Fair Representation - Unfair Labour Practice - Applicant asserting that union's handling of grievance violating the *Act* - Board receiving evidence of the Applicant and then advising parties that it wished to hear their submissions - Board explaining reasons for its intervention and procedural direction - Board concluding that union did not violate the *Act* in respect of any of its actions - Application dismissed

COVINGTON CLARKE; LOCAL 400 F.W.D. - INTERNATIONAL UNION OF ELECTRONIC, ELECTRICAL, SALARIED, MACHINE AND FURNITURE WORKERS, AFL-CIO/LA-Z-BOY CANADA LIMITED ..... (June)

649

Practice and Procedure - Duty of Fair Representation - Unfair Labour Practice - Applicants asserting that decision not to take their job posting grievance to arbitration violating union's duty of fair representation - Board declining to inquire into application having regard to delay in filing it, previous parallel proceeding, likelihood of success, nature and



utility of any remedy that might flow, cost implications, passage of time from critical events, and shifting labour relations situation - Application dismissed

MIRZA ALAM, BRIAN AMES, MAHMOOD ANSARI, MOHD ASLAM, BRUCE BOULTON, ROBERT CAMPBELL, ASHTON CASPERSZ, JANA CIBULKA, ED FODEN, ARTHUR GLEGHORN, NIKOLAS ILKOS, JOE KAROL, STEVE KIRILOVIC, ANTHONY KORSMAN, SHU-TAK KWAN, FRED LA ROCHE, MAHENDAR MAKIM, CAROLYN OAKS, RAJ PURI, VINCE RISI, PHIL RUSSELL, DANNY SAMSON, FRANK SINDELAR, HANK TEEUWISSEN, STAN TRAKALO, BILL TYNDALL AND MICHAEL WONG; RE POWER WORKERS' UNION - CUPE LOCAL 1000; RE ONTARIO HYDRO ..... (June)

627

Practice and Procedure - Duty of Fair Representation - Unfair Labour Practice - Employee alleging violation of union's duty of fair representation based on a refusal to arbitrate his overtime grievance, an allegedly improperly worded grievance regarding sick days, and the failure of the union to consult him regarding a transfer - At the close of employee's case and at vice-chair's request, employee making argument - Board not satisfied that section 69 of the Act violated and dismissing application

ARTHUR CHEN; RE LOCAL 43 METRO TORONTO CIVIC EMPLOYEES UNION CUPE AFFILIATE; RE THE CITY OF TORONTO ..... (Sept.)

1184

Practice and Procedure - Duty to Bargain in Good Faith - First Contract Arbitration - Interest Arbitration - Unfair Labour Practice - Employer complaining of bad faith bargaining where union put certain issues to interest arbitrator which had not been pursued in bargaining - Board finding nothing illegal about raising "new" issues or changing position in course of submissions to arbitration - Once arbitration process invoked, it is for arbitrator to decide what terms of first agreement will be - Board concluding that facts pleaded disclosing no violation of the Act - Application dismissed

CENTRE JUBILEE CENTRE; RE USWA, GERRY LORANGER, BRIAN SHELL ..... (July)

821

Practice and Procedure - Evidence - Petition - Termination - Applicant not providing Board with detailed evidence of origination of petition, nor any evidence with respect to circulation of petition or continuity of carriage of petition after it was received by employee collecting signatures and then to the Board, nor any evidence of circumstances in which each and every signature collected - Union's non-suit motion granted - Application to terminate bargaining rights dismissed

MAPLE LODGE FARMS LTD.; RE GARAGE WORKERS MAPLE LODGE FARMS LTD.; RE UFCW, LOCAL 175 ..... (Oct.)

1371

Practice and Procedure - Evidence - Reconsideration - Union Successor Status - Objecting employees seeking reconsideration of Board's decision declaring Steelworkers' to be successor union to RWDSU on grounds that the employer had posted no notice of the proceeding in the workplace - At conclusion of objecting employees' case, employer making motion for early dismissal of the reconsideration application - Board reviewing jurisprudence and policy considerations associated with procedures for facilitating swift, balanced hearings which combine expedition and full opportunity to be heard - Board not requiring employer or Steelworkers' to make election as to whether to call evidence or not, but dismissing employer's motion

THE GREAT ATLANTIC & PACIFIC COMPANY OF CANADA, LIMITED; RE RWDSU, AFL-CIO-CLC AND ITS LOCAL AFFILIATES RWDSU AFL-CIO-CLC, LOCAL 414, 429, 545, 579, 582, 915 AND 991; RE RWDSU, CANADIAN SERVICE SECTOR DIVISION OF THE USWA, LOCAL 414 ..... (Aug.)

1127

Practice and Procedure - Evidence - Union requesting that employer be directed to produce copy

- of “pay equity report” prepared by consultant - Employer submitting that report’s production prevented by provisions of *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* - Board directing that report be produced - Board finding report relevant and determining that production not prevented by *MFIPPA* - Sections 51(1) and 51(2) of *MFIPPA* ensuring that Board’s power to compel witnesses and production of documents maintained
- ESSEX COUNTY BOARD OF EDUCATION; RE ONTARIO SECONDARY SCHOOL TEACHERS’ FEDERATION ..... (Feb.) 129
- Practice and Procedure - Jurisdictional Dispute - OSSTF alleging that work of occasional teachers being improperly assigned to “study room supervisors” represented by CUPE - Board rejecting CUPE’s argument that Minister of Education having exclusive jurisdiction to resolve dispute involving alleged contravention of *Education Act* - Board not persuaded to exercise its discretion not to inquire into complaint because of greater expertise of alternative decision-maker - Board directing the filing of supplementary materials, including witness lists and detailed outline of evidence witnesses intend to give
- KENT COUNTY BOARD OF EDUCATION AND THE CUPE, LOCAL 2214; RE ONTARIO SECONDARY SCHOOL TEACHERS’ FEDERATION ..... (June) 701
- Practice and Procedure - Reference - Union requesting production of certain documents - Employer not disputing relevance of documents but asserting that production should not be ordered where health legislation and professional obligations impose standards of confidentiality on health professional with respect to medical information - Board directing that documents sought be produced - Board finding it unnecessary to order that confidential documents tendered to Board be sealed in view of Board’s general practice and having regard to provisions of *Freedom of Information and Protection of Privacy Act*
- RESIDENCE ON THE ST. CLAIR, QUADRILLE DEVELOPMENT CORPORATION C.O.B. AS THE; RE CUPE, LOCAL 3678 ..... (Feb.) 177
- Practice and Procedure - Sale of a Business - Union alleging sale of a business under section 64.2 of the Act and pleading material facts sufficient to ground the application - Respondent not filing reply - Board applying Rule 19 and deeming respondent to have accepted facts set out in application - Board declaring sale of a business
- LENCAN INVESTIGATION SERVICES INC.; RE USWA ..... (Nov.) 1547
- Pre-Hearing Vote - Bargaining Unit - Bargaining Rights - Certification - Applicant union proposing single “all employee” bargaining unit - Incumbent union asserting that separate units of Registered Nurses and Registered Nursing Assistants and of all other employees appropriate - Applicant’s proposed unit found to be appropriate - Board directing that ballots cast in pre-hearing vote be counted
- SIMCOE TERRACE, 601192 ONTARIO LTD. C.O.B. AS; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) ..... (Feb.) 178
- Pre-Hearing Vote - Certification - Collective Agreement - Timeliness - Trade Union Status - Staff Association wishing to displace CUPE as bargaining agent for employees of Board of Education - Staff Association found to be trade union within meaning of *Labour Relations Act* - Board concluding that extension of collective agreement to March 31, 1996 pursuant to section 35 of *Social Contract Act* making staff association’s certification application untimely
- OTTAWA BOARD OF EDUCATION; RE CUPE AND ITS LOCAL 1400; RE EDUCATION SUPPORT STAFF ASSOCIATION ..... (Aug.) 1024
- Pre-Hearing Vote - Certification - Timeliness - Certification application made by raiding union timely when filed - Incumbent union submitting that notice given by it under section 35 of

the *Social Contract Act* having effect of closing open period retroactively - Board finding no basis for interpretation offered by incumbent union - Board directing that ballots cast in representation vote be counted

THE CORPORATION OF THE CITY OF SCARBOROUGH; CUPE; RE  
ONA .....(Mar.) 300

Pre-Hearing Vote - Certification - Union applying for certification and requesting pre-hearing vote - Employer submitting that Board without jurisdiction to direct vote and requesting hearing to deal with issue prior to vote being held - Board declining employer's request, directing that pre-hearing vote be taken, and that ballot box be sealed pending disposition of issues in dispute

KNOB HILL FARMS LIMITED; RE TEAMSTERS LOCAL UNION 938; RE GROUP  
OF EMPLOYEES..... (May) 559

Ratification and Strike Vote - Change in Working Conditions - Employee - Strike - Strike Replacement Workers - Unfair Labour Practice - Union's compliance with section 74(5) of Act arising in context of strike replacement application - Whether laid off employee with only possibility of recall entitled to participate in strike vote - Parties agreeing that individual entitled to vote only if found to be employee in bargaining unit - Board finding individual without sufficiently substantial employment attachment to be considered employee within bargaining unit with entitlement to vote - Board finding that employer carrying on business as before in hiring students who had worked for it for the last 4 summers and not recalling individual from lay-off who had worked for it for three weeks almost one year earlier - Applications alleging violation of statutory freeze and violation of strike replacement ban dismissed

GOULARD LUMBER (1971) LIMITED, MARK GOULARD AND ROMEO GOULARD RE IWA-CANADA, LOCAL 1-2693 AND LEO LAFLEUR ..... (Oct.) 1334

Ratification and Strike Vote - Duty of Fair Representation - Witness - Unfair Labour Practice - Applicant alleging that union breached *Act* when it negotiated and secured employee ratification of agreement permitting third shift in employer's Oshawa truck plant - Applicant complaining about process by which agreement concluded - Applicant also complaining about conduct allegedly intended to intimidate or penalize witnesses in Board proceeding - Board concluding that allegations without foundation - Application dismissed

MARY ANNE GREEN, CAW LOCAL 222 UNION MEMBER; RE JOHN CAINES, CAW LOCAL 222 UNION PLANT CHAIRPERSON; RE GENERAL MOTORS OF CANADA LIMITED ("GMCL") ..... (June) 677

Ratification and Strike Vote - Reconsideration - Settlement - Strike - Strike Replacement Workers - Unfair Labour Practice - Employer seeking reconsideration of Board decision finding that employer unlawfully using strike replacement workers - Board not permitting employer to resile from its earlier agreement with union that conditions in subsections 73.1(2) and (3) had been met - Reconsideration application dismissed

MARRIOTT MANAGEMENT SERVICES; RE CUPE AND ITS LOCAL 229.....(Aug.) 1018

Ratification and Strike Vote - Strike - Unfair Labour Practice - Employee complaining about secrecy of strike vote 8 weeks after the vote and 3 weeks into the strike - Board finding applicant's delay in making application to be significant and without reasonable explanation - Board exercising its discretion against inquiring further into merits of application

MARRIOTT MANAGEMENT SERVICES; RE VICTOR CARQUEZ; RE CUPE AND ITS LOCAL 229 ..... (July) 857

Ratification and Strike Votes - Reconsideration - Strike - Strike Replacement Workers - Unfair Labour Practice - Union making application in respect of alleged unlawful use replacement



workers during strike - Issue arising as to whether section 73.1 of the Act applying - Board not satisfied that strike vote conducted by union in accordance with section 74(4) to (6) - Unfair labour practice complaint and reconsideration application dismissed

TOROMONT INDUSTRIES LTD., TOROMONT, A DIVISION OF; RE THE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 112 .....(Aug.)

1149

Reconsideration - Adjournment - Bargaining Unit - Certification - Practice and Procedure - Employer operating private medical centre - Board earlier finding nurses' bargaining unit to be appropriate for collective bargaining and determining that ONA to be issued certificate - Employer seeking reconsideration of that decision - CAW subsequently applying for certification in respect of all-employee unit excluding nurses - In CAW application, employer proposing all-employee unit (with no exclusion for nurses) or, alternatively, one excluding medical technologists and technicians as well as nurses - Certain employees supporting employer's alternative position on bargaining unit - Board declining to adjourn CAW application pending reconsideration decision in respect of ONA application - Board finding CAW's proposed bargaining unit appropriate - Certificate issuing - Employer's reconsideration application in respect of CAW application dismissed

GLAZIER MEDICAL CENTRE; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA); RE GROUP OF EMPLOYEES..... (May)

550

Reconsideration - Certification - Charges - Intimidation and Coercion - Fraud - Membership Evidence - Unfair Labour Practice - Following union's certification, certain employees making unfair labour practice application complaining about manner in which fellow employee collected membership evidence - Employer also seeking reconsideration of certification decision - Board hearing evidence of nine persons and resolving conflicting evidence in favour of union's witness - Board finding that employee collector did not contravene *Act* when he approached employees to obtain membership evidence - Employee collector's actions not causing Board to conclude that filed membership evidence unreliable - Applications dismissed

MADAWASKA HARDWOOD FLOORING INC.; RE IWA - CANADA .....(Mar.)

267

Reconsideration - Certification - Constitutional Law - Employer operating flour mill and seeking reconsideration of 1991 decision certifying trade union - Employer asserting that its operations involve federal work and that Board without constitutional jurisdiction to deal with 1991 certification decision - Board noting that bargaining rights granted by certificate since subsumed by collective agreement entered into by union and employer - Decision on constitutional propriety of certificate issued in 1991 would not resolve constitutional issue which would continue to exist between the parties - Board declining to entertain reconsideration request

MCCARTHY MILLING LIMITED; RE UFCW, LOCAL 175; RE ADM-AGRI INDUSTRIES LIMITED..... (May)

577

Reconsideration - Certification - Construction Industry - Board certifying union in ICI and non-ICI bargaining units - Employer applying for reconsideration two weeks later on various grounds including its assertion that it had received an incomplete package of materials from the Board in connection with the union's application and that it had been misled as to its obligations by comments from a clerk at the Board - Application dismissed

JAMES JOHNSTON MECHANICAL CONTRACTING LTD.; RE LOCAL UNION 47 SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION.....(Dec.)

1671

Reconsideration - Certification - Construction Industry - Membership Evidence - Settlement - Union certified after entering into minutes of settlement with employer regarding descrip-

tion of bargaining unit and list of employees at work on application date - Employer seeking reconsideration of certification decision and relying on various grounds, including assertion that it had not received legal advice prior to signing settlement document, that it included specimen signatures for only 4 of 5 employees on the list and that it did so only after the terminal date - Employer also alleging non-sign - Board finding no basis for doubting reliability of membership evidence filed or for reconsidering its decision on any other basis - Reconsideration application dismissed

MARLI MECHANICAL LTD.; RE UA, LOCAL UNION 46 ..... (June) 725

Reconsideration - Certification - Interim Relief - Practice and Procedure - Stay - Employer applying for reconsideration of "bottom line" decision to certify union and seeking interim order staying Board's decision pending issuance of reasons for decision - Board explaining importance of avoiding delay in labour relations and practice of issuing "bottom line" decisions with reasons to follow - Balance of harm weighing against staying Board's decision - Application dismissed

ROYALGUARD VINYL CO., A DIVISION OF ROYPLAST LIMITED; RE USWA ..... (June) 775

Reconsideration - Construction Industry - Construction Industry Grievance - Damages - Remedies - Board earlier refusing to enforce 120 per cent interest rate set out in collective agreement - Union's reconsideration application dismissed

BAIRRADA MASONRY INC.; LIUNA, LOCAL 183 ..... (Mar.) 204

Reconsideration - Construction Industry - Construction Industry Grievance - Practice and Procedure - Employer failing to attend Board hearing and seeking to have Board reconsider decision making various orders and declarations - Employer claiming that union official represented that Board hearing scheduled for 2:30 p.m. and not 9:30 a.m. as indicated in Board's Notice of Hearing - Board finding that party who fails to check Notice of Hearing and chooses to rely on recollection or representation of others does so at its own risk - Reconsideration application dismissed

JOHN MAGGIO EXCAVATING LTD.; RE IUOE, LOCAL 793 ..... (Jan.) 31

Reconsideration - Construction Industry - Jurisdictional Dispute - Natural Justice - Practice and Procedure - Labourers' union and Carpenters' union disputing assignment of work related to fabrication, installation and dismantling of bulkheads in Board Area 6 in ICI sector - Board directing that work be assigned to Carpenters - Labourers' union requesting reconsideration on various grounds, including assertion that "consultation" procedure violating rules of natural justice - Application for reconsideration dismissed

ROBERTSON YATES CORPORATION LIMITED, UNITED FLOOR COMPANY LTD., CJA, LOCAL 785; LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL, LOCALS 506 AND 1081 ..... (Oct.) 1411

Reconsideration - Continuation of Benefits - Practice and Procedure - Unfair Labour Practice - Strike - Board determining that under section 81.1 of the *Act*, union entitled to tender payments for selected benefits - Employer directed to provide union with information respecting amounts necessary to continue benefits selected by union - Employer applying for reconsideration on ground that Board without jurisdiction to make its production order and on ground that Board was required to first determine whether union had tendered any payment before making any order or direction - Reconsideration application dismissed

PARTEK INSULATIONS LTD.; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 456 ..... (Feb.) 167

Reconsideration - Duty of Fair Representation - Practice and Procedure - Unfair Labour Practice

- Board declining applicant's request to provide him with copy of chair's hearing notes - Reconsideration application dismissed  
 ANTOINE A. PLENNEVAUX; LIUNA, LOCAL 1036 ..... (May) 593
- Reconsideration - Duty of Fair Representation - Practice and Procedure - Unfair Labour Practice - Complainant's request for reconsideration made six months after Board's decision - Board finding no reason to abridge time limit for reconsideration requests established by Rule 85 - Application for reconsideration dismissed  
 REGINALD FITZGERALD; RE ALEX KEENEY, LOCAL 200, C.A.W.; RE FORD MOTOR COMPANY LTD. ....(Nov.) 1535
- Reconsideration - Evidence - Practice and Procedure - Union Successor Status - Objecting employees seeking reconsideration of Board's decision declaring Steelworkers' to be successor union to RWDSU on grounds that the employer had posted no notice of the proceeding in the workplace - At conclusion of objecting employees' case, employer making motion for early dismissal of the reconsideration application - Board reviewing jurisprudence and policy considerations associated with procedures for facilitating swift, balanced hearings which combine expedition and full opportunity to be heard - Board not requiring employer or Steelworkers' to make election as to whether to call evidence or not, but dismissing employer's motion  
 THE GREAT ATLANTIC & PACIFIC COMPANY OF CANADA, LIMITED; RE RWDSU, AFL-CIO-CLC AND ITS LOCAL AFFILIATES RWDSU AFL-CIO-CLC, LOCAL 414, 429, 545, 579, 582, 915 AND 991; RE RWDSU, CANADIAN SERVICE SECTOR DIVISION OF THE USWA, LOCAL 414 .....(Aug.) 1127
- Reconsideration - Petition - Termination - Board not accepting that petitions filed representing voluntary expression of wishes of employees - Termination application dismissed - Reconsideration application dismissed  
 MAPLE LODGE FARMS; RE MECHANICS IN GARAGE MAPLE LODGE FARM; RE UFCW, LOCAL 175. ....(Apr.) 447
- Reconsideration - Ratification and Strike Vote - Settlement - Strike - Strike Replacement Workers - Unfair Labour Practice - Employer seeking reconsideration of Board decision finding that employer unlawfully using strike replacement workers - Board not permitting employer to resile from its earlier agreement with union that conditions in subsections 73.1(2) and (3) had been met - Reconsideration application dismissed  
 MARRIOTT MANAGEMENT SERVICES; RE CUPE AND ITS LOCAL 229 .....(Aug.) 1018
- Reconsideration - Ratification and Strike Votes - Strike - Strike Replacement Workers - Unfair Labour Practice - Union making application in respect of alleged unlawful use replacement workers during strike - Issue arising as to whether section 73.1 of the Act applying - Board not satisfied that strike vote conducted by union in accordance with section 74(4) to (6) - Unfair labour practice complaint and reconsideration application dismissed  
 TOROMONT INDUSTRIES LTD., TOROMONT, A DIVISION OF; RE THE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 112 .....(Aug.) 1149
- Reference - Abandonment - Bargaining Rights - Construction Industry - Board not persuaded that 15 month delay between no-board report and request for first contract arbitration, of itself, sufficient to warrant conclusion that union abandoned bargaining rights - Board advising Minister of Labour that union's bargaining rights not abandoned  
 DYNAMO MASONRY CONTRACTING LTD.; RE BAC, LOCAL 2 .....(Apr.) 369
- Reference - Bargaining Unit - Combination of Bargaining Units - Hospital Labour Disputes Arbi-



tration Act - Board finding residential care programme of children's treatment centre to be "hospital" within meaning of Hospital Labour Disputes Arbitration Act, and that whole of treatment centre also a "hospital" within meaning of the Act - Union holding bargaining rights for unit of employees working in group homes in residential care programme and for two units of therapists at treatment centre - Union's application to combine bargaining units allowed

GEORGE JEFFREY CHILDREN'S TREATMENT CENTRE; SEU, LOCAL 268 ..... (Dec.) 1656

Reference - Final Offer Vote - First Contract Arbitration - Union's request for first contract arbitration under section 41(1.2) of the Act followed by employer's request for final offer vote under section 40 of the Act - Union objecting to final offer vote - Minister of Labour referring issue to Board for its advice - Board advising Minister that *Labour Relations Act* not establishing any scheme of priority as between requests under sections 40 and 41 of the Act - Board finding no incompatibility in operation of sections 40 and 41 - Minister advised that final offer vote should proceed on usual terms

ISADORE ROY LUMBER LIMITED; RE INTERNATIONAL UNION OF WOODWORKERS, LOCAL 2693 ..... (Sept.) 1233

Reference - Hospital Labour Disputes Arbitration Act - Board finding retirement home to be "hospital" within meaning of the *Hospital Labour Disputes Arbitration Act*

SELECT LIVING (1991) LTD.; RE PRACTICAL NURSES FEDERATION OF ONTARIO ..... (Aug.) 1082

Reference - Hospital Labour Disputes Arbitration Act - Board finding seniors' residential facility to be home for the aged and, thus, a "hospital" within the meaning of the *Hospital Labour Disputes Arbitration Act*

BRANCH 133 LEGION VILLAGE INC.; RE UFCW, LOCAL 175 ..... (Aug.) 970

Reference - Hospital Labour Disputes Arbitration Act - Employees of organization providing services to adults with developmental handicaps found to be "hospital employees" within meaning of Hospital Labour Disputes Arbitration Act

SUREX COMMUNITY SERVICES; RE OPSEU AND ITS LOCAL 5102 ..... (Oct.) 1430

Reference - Practice and Procedure - Union requesting production of certain documents - Employer not disputing relevance of documents but asserting that production should not be ordered where health legislation and professional obligations impose standards of confidentiality on health professional with respect to medical information - Board directing that documents sought be produced - Board finding it unnecessary to order that confidential documents tendered to Board be sealed in view of Board's general practice and having regard to provisions of *Freedom of Information and Protection of Privacy Act*

RESIDENCE ON THE ST. CLAIR, QUADRILLE DEVELOPMENT CORPORATION C.O.B. AS THE; RE CUPE, LOCAL 3678 ..... (Feb.) 177

Reference - sale of a business - union representing predecessor hotel's employees alleging sale of a business - board satisfied that alleged successor purchased certain assets from predecessor, but that ongoing enterprise not transferred - board finding that predecessor operated hotel business and that alleged successor operating restaurant business and acting as landlord - board finding no sale of business - board advising minister that alleged successor not bound by predecessor's collective agreement with union

SANFORDS ROADHOUSE RESTAURANT; RE THE HOSPITALITY, COMMERCIAL AND SERVICE EMPLOYEES UNION, LOCAL 73 ..... (July) 897

Related Employer - Bargaining Rights - Public hospital setting up nursing home in 1984 and

establishing it as separate corporate entity - ONA certified in 1987 to represent nurses employed at hospital and in 1992 to represent nurses employed at nursing home - ONA applying to have hospital and nursing home declared related employers in order to meet nursing home's "ability to pay" argument in interest arbitration - Board unable to find that nursing home acting as nurses' employer in name only or that hospital possessing real economic control over nursing home's nurses - Application dismissed

DEER PARK VILLA, WEST LINCOLN MEMORIAL HOSPITAL AND WEST LINCOLN MULTILEVEL HEALTH FACILITY INC. OPERATING AS; RE ONA; RE NIAGARA HEALTH CARE AND SERVICE WORKERS UNION LOCAL 302, CLA..... (Sept.)

1196

Related Employer - Bargaining Rights - Remedies - Company "A" acquiring companies "B" and "C" - Union holding bargaining rights at one of B's locations - A consolidating warehouse operations at C's location - B's unionized work transferred to C's non-union workforce, but no employees of B actually transferred - Collective agreement providing that where part of operation transferred to new location within 50 mile radius of plant, employer will recognize union as bargaining agent for those operations - Union seeking single employer declaration - Employer asking Board to exercise its discretion against making the declaration - Board declaring companies A, B and C to be one employer for purposes of the *Act*, but restricting declaration to warehouse operations at company B location

GROUPE SCHNEIDER S.A., SCHNEIDER CANADA INC., MERLING GERIN LTD. (FEDERAL PIONEER DIVISION), AND SQUARE D COMPANY OF CANADA; RE COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA, LOCAL 521..... (Feb.)

142

Related Employer - Change in Working Conditions - Interim Relief - Remedies - Unfair Labour Practice - Board making interim order directing employer to rescind or suspend operation of new arrangements affecting employees pending determination of union's complaint or expiration of "freeze", whichever first occurs

CHECKER LIMOUSINE AND AIRPORT SERVICE, G. HANLON HOLDINGS INC., G.J. HANLON ("HANLON") AND J. ORENDORFF, 947465 ONTARIO LTD., C.O.B. AS; RE RETAIL WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF THE UNITED STEELWORKERS OF AMERICA, LOCALS 414, 422, 440, 448, 461, 483, 488, 1000 AND 1688 .....(Aug.)

991

Related Employer - Construction Industry - Board finding that statutory preconditions established by section 1(4) of the *Act* met - Fact that only a portion of related employer's work would potentially fall under ICI agreement not a factor causing Board to exercise discretion against making single employer declaration - Board unable to determine, based on evidence and argument before it, whether ICI agreement applying to work performed in related employer's shop - Board applying *Metroland Printing* case - Board issuing related employer declaration in order to preserve applicant union's ability to claim work and ensure that, if disputed, the issue will be dealt with by Board of Arbitration

DUFFY MECHANICAL CONTRACTORS LIMITED, DURASYSTEMS BARRIERS INC.; RE SMW, LOCAL 30.....(Aug.)

992

Related Employer - Construction Industry - Construction Industry Grievance - Carpenters' union alleging that hotel and construction manager for hotel construction project constituting one employer for purposes of the *Act* - Union also grieving alleged violation of construction management provision of Carpenters' provincial agreement - Board finding that construction management provision of collective agreement contravened when bids solicited from non-union contractors for foundation work, but in no other respect - Board applying *Dalton* case and declining to exercise discretion under section 1(4) of the *Act* where contravention

of construction management clause arising out of circumstances where construction manager did not acquire any right or obligation over work covered by agreement

MAATEN CONSTRUCTION LIMITED; 865541 ONTARIO INC.; RE CJA, LOCAL 1256..... (Apr.) 438

Related Employer - Construction Industry - Construction Industry Grievance - Sale of a Business - Board finding successor's owner to be quintessential "key person" and finding sale of a business under section 64 of the *Act* - Board also making related employer declaration under section 1(4) of the *Act*

STEELES ELECTRIC, ELI'S ELECTRIC SERVICE, TOWN AND COUNTRY ELECTRIC LTD., TOWN AND COUNTRY ELECTRIC, STEELES ELECTRIC, E & E STEELES ELECTRIC LTD. C.O.B. AS E & E STEELES ELECTRIC C.O.B. AS; RE IBEW, LOCAL 353..... (May) 603

Related Employer - Construction Industry - Evidence - Practice and Procedure - Remedies - In absence of contrary pleadings or evidence, Board deeming respondents to have accepted certain facts stated in application - Board finding five respondents engaged in related activities and finding common direction and control among four respondents - Board drawing adverse inferences from lack of production and lack of evidence produced by those respondents - Single employer declaration issuing in respect of four respondents - Board distinguishing *Golden Arm Flooring* case in respect of joint and several liability where damages awarded in earlier Board proceeding against one respondent predated relationship between it and other respondents - Application in respect of fifth respondent dismissed

CENTRAL FORMING & CONCRETE INC.; ALTRACON CONSTRUCTION LIMITED; GASPO CONSTRUCTION LIMITED; ASHWORTH ENGINEERING INC.; RE CARPENTERS AND ALLIED WORKERS, LOCAL 27, CJA ..... (July) 805

Related Employer - Construction Industry - Sale of a Business - Board not accepting union's characterization of certain individual as "key man" during relevant period - Two and one half years separating departure of alleged "key man" from company A and his joining company B - Company A continuing to grow and prosper following departure of alleged "key man" - Sale of a business and related employer applications dismissed

TRI-CORPS INDUSTRIAL CONTRACTORS, INDUSTRIAL LABOUR CORPS. INC., SCOTRON HOLDINGS INC., CHRISTMAN & LEITCH CONTRACTORS LTD., CHRISTMAN & ASSOCIATES CONTRACTORS LTD.; RE THE MILLWRIGHT DISTRICT COUNCIL OF ONTARIO ON ITS OWN BEHALF AND ON BEHALF OF LOCAL 1916..... (Oct.) 1446

Related Employer - Construction Industry - Unfair Labour Practice - Construction company violating Act by incorporating new company in order to enter into agreement with Labourers' union with respect to employees who, absent the incorporation, would have been represented by Bricklayers' union - Bricklayers seeking related employer declaration in respect of a number of construction contractors - Board issuing declaration in respect of three of the companies, but not in respect of fourth company - Board exercising its discretion against making declaration where its effect would be tantamount to a revocation of Labourers' certificate with respect to fourth company

BAYRITZ CONSTRUCTION LTD. AND BAYRITZ MASONRY LTD. AND DAKOTA MASONRY LTD. AND 986153 ONTARIO LTD. C.O.B. AS YELLOW BRICK MASONRY AND SUNDIAL BRICKLAYERS INC.; RE BAC; RE LIUNA, LOCAL 183..... (Oct.) 1283

Remedies - Bargaining Unit - Combination of Bargaining Units - Board earlier combining newly-certified unit with already-existing bargaining unit, and remaining seized - Board declining to make direction under section 7(5) where parties had not engaged in real negotiations



concerning terms and conditions of employment of newly certified employees - Board remaining seized	
OLYMPIA & YORK DEVELOPMENTS LIMITED; RE INDEPENDENT CANADIAN TRANSIT UNION AND ITS LOCAL 6..... (May)	583
Remedies - Bargaining Unit - Combination of Bargaining Units - Practice and Procedure - Board earlier combining employer's "parts" and "manufacturing" bargaining units - Parties unable to resolve outstanding remedial issues surrounding application - Board directing parties to file further pleadings in order to facilitate hearing	
FMG TIMBERJACK INC.; RE GLASS, MOLDERS, POTTERY, PLASTICS & ALLIED WORKERS INTERNATIONAL UNION ..... (Oct.)	1333
Remedies - Bargaining Unit - Combination of Bargaining Units - Practice and Procedure - Board in earlier decision combining full-time and part-time units and remaining seized to deal with further relief - Union subsequently asking Board to set matter down for hearing with respect to remedial relief - Before listing matter for hearing, Board directing union to provide it and employer with detailed description of orders or remedies requested and detailed statement of all material facts on which it relies in accordance with Rule 12 - Employer directed to reply within seven days and to supply information required by Rule 14	
MARRIOTT CORPORATION (AT CARLETON UNIVERSITY); RE CUPE AND ITS LOCAL 2451.....(Aug.)	1016
Remedies - Bargaining Unit - Combination of Bargaining Units - Union seeking to combine newly certified editorial bargaining unit in Simcoe County with existing bargaining unit covering various locations including Metropolitan Toronto - Employer submitting that should Board grant union's application, Board should direct freeze of terms and conditions of Simcoe employees and Board should not remain seized of further outstanding issues - Board directing that bargaining units be combined and remaining seized to deal with any further remedial relief	
METROLAND PRINTING, PUBLISHING AND DISTRIBUTING LTD.; RE SOUTHERN ONTARIO NEWSPAPER GUILD LOCAL 87, THE NEWSPAPER GUILD (CLC, AFL-CIO) ..... (Feb.)	160
Remedies - Certification - Certification Where Act Contravened - Construction Industry - Discharge - Discharge for Union Activity - Interference in Trade Unions - Intimidation and Coercion - Unfair Labour Practice - Employer violating Act in threatening and intimidating one employee with respect to union membership and in laying off second employee because of his union activity - Reinstatement with compensation ordered - Board determining that as result of employer's violations true wishes of employees unlikely to be ascertained - Union certified under section 9.2 of the Act	
BASILE INTERIORS LTD.; RE PAT, LOCAL 1494 .....(Aug.)	963
Remedies - Certification - Certification Where Act Contravened - Interference with Trade Unions - Intimidation and Coercion - Unfair Labour Practice - Employer found to have violated Act by certain statements contained in bulletins distributed to employees, certain statements made by employer at meeting with employees, and by certain statements made to two employees about soliciting support for the union - Board directing employer to post and distribute Board notice to employees, to permit union access to plant during working hours for purpose of convening meeting with employees out of presence of members of management, and to rescind written warnings given to two employees - Board declining to certify union under section 9.2 of the Act - Representation vote directed	
CANAC KITCHENS LIMITED; RE CJA .....(Aug.)	972
Remedies - Change in Working Conditions - Discharge - Discharge for Union Activity - <i>Hospital</i>	

*Labour Disputes Arbitration Act- Interim Relief - Settlement - Unfair Labour Practice - Union certified three years earlier and still without first collective agreement - Union making unfair labour practice complaint in respect of work reorganization ("alternative placement") and lay-offs affecting one-half of the bargaining unit - Union alleging that employer's conduct motivated by anti-union animus, breaching statutory freeze and violating minutes of settlement of earlier complaint - Union seeking interim order preserving status quo pending disposition of unfair labour practice complaint or until interest arbitration award issued - Employer implementing impugned changes after notice of union's interim relief application, but before Board hearing - Board concluding that balance of harm weighing in favour making interim order - Employer directed to restore and maintain status quo with respect to bargaining unit jobs pending disposition of union's complaint*

THE MISSISSAUGA HOSPITAL; RE THE PRACTICAL NURSES FEDERATION OF ONTARIO ..... (July)

934

Remedies - Change in Working Conditions - Interference in Trade Unions - Interim Relief - Unfair Labour Practice - New schedule alleged by union to violate statutory freeze and to be motivated by anti-union considerations - Union filing unfair labour practice complaint and seeking interim relief - Balance of harm weighing in favour of union - Employer directed to revoke new scheduling system and to reinstate prior system on interim basis pending disposition of union's unfair labour practice complaint

VISTAMERE RETIREMENT RESIDENCE, 678114 ONTARIO INC. C.O.B. AS; RE PRACTICAL NURSES FEDERATION OF ONTARIO ..... (Sept.)

1274

Remedies - Change in Working Conditions - Interim Relief - Related Employer - Unfair Labour Practice - Board making interim order directing employer to rescind or suspend operation of new arrangements affecting employees pending determination of union's complaint or expiration of "freeze", whichever first occurs

CHECKER LIMOUSINE AND AIRPORT SERVICE, G. HANLON HOLDINGS INC., G.J. HANLON ("HANLON") AND J. ORENDORFF, 947465 ONTARIO LTD., C.O.B. AS; RE RETAIL WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF THE UNITED STEELWORKERS OF AMERICA, LOCALS 414, 422, 440, 448, 461, 483, 488, 1000 AND 1688 ..... (Aug.)

991

Remedies - Change in Working Conditions - Interim Relief - Unfair Labour Practice - Board directing employer to defer implementation of announced shift/schedule changes pending determination of union's unfair labour practice complaint

MULTIPAK LTD.; RE TORONTO TYPOGRAPHICAL UNION NO. 91-0 ..... (July)

884

Remedies - Change in Working Conditions - Interim Relief - Unfair Labour Practice - Board directing employer to maintain present scheduling system on interim basis pending disposition of union's unfair labour practice application

VISTAMERE RETIREMENT RESIDENCE, 678114 ONTARIO INC. C.O.B. AS; RE PRACTICAL NURSES FEDERATION OF ONTARIO ..... (Nov.)

1602

Remedies - Change in Working Conditions - Interim Relief - Unfair Labour Practice - Union alleging that change in benefit plan and change in method of wage payment to particular classification improperly motivated and violating statutory freeze - Union's application for interim relief dismissed on grounds of delay

THE BRICK WAREHOUSE CORPORATION; RE SEU LOCAL 268, AFFILIATED WITH THE S.E.I.U., A.F. OF L., C.I.O. AND C.L.C. .... (Aug.)

1116

Remedies - Change in Working in Conditions - Discharge - Discharge for Union Activity - Interim Relief - Unfair Labour Practice - Union filing unfair labour practice complaint in respect of employee's discharge and in respect of work reorganization and second employ-

ee's demotion alleged to violate statutory freeze - Union seeking interim relief pending determination of complaint - Board declining to order reinstatement of discharged employee but directing employer to continue or restore second employee's terms and conditions of employment on interim basis	
OMBUDSMAN ONTARIO; RE OPEIU, LOCAL 343 .....	(July) 885
Remedies - Consent to Prosecute - Interim Relief - Unfair Labour Practice - Union filing complaint and seeking consent to prosecute in respect of alleged violation of earlier Board order directing that key union supporter be reinstated to office duties - Union seeking interim order reinstating employee - Board noting considerable labour relations harm of leaving Board order in state of non-compliance - Board directing that employee be reinstated and that employer post Board notice in workplace	
BANNERMAN ENTERPRISES INC.; RE USWA .....	(Sept.) 1179
Remedies - Construction Industry - Construction Industry Grievance - Damages - Board earlier finding employer in violation of collective agreement in failing to subcontract certain work to company in contractual relations with Labourers' union - Parties failing to agree on whether damages owing - Board not accepting employer's assertion that, in order to prove entitlement to damages, union must prove that employer or union subcontractor had same equipment, expertise and supervisory capacity actually supplied by subcontractor used by employer - Union here showing that it had members available to perform contracted work and that it was within capability of union contractors or of the employer to perform work described in contract documents - Board satisfied that union proving its entitlement to compensation	
ELLIS-DON LIMITED; RE LIUNA, LOCAL 1036 AND LIUNA ONTARIO PROVINCIAL DISTRICT COUNCIL .....	(Apr.) 386
Remedies - Construction Industry - Construction Industry Grievance - Damages - Reconsideration - Board earlier refusing to enforce 120 per cent interest rate set out in collective agreement - Union's reconsideration application dismissed	
BAIRRADA MASONRY INC.; LIUNA, LOCAL 183 .....	(Mar.) 204
Remedies - Construction Industry - Construction Industry Grievance - Damages - Union seeking damages for wages owing against corporate employer and against corporate director in his personal capacity - Union relying on Ontario <i>Business Corporations Act (OBCA)</i> and <i>Employment Standards Act</i> in respect of order against director - Board concluding that Board without jurisdiction to enforce provisions of <i>OBCA</i> or <i>ESA</i> as if it were either a civil court in which a civil action had been commenced, or an employment standards officer making an order under the <i>ESA</i> - Board quantifying damages and making order against employer only	
SPENCER CONSTRUCTION COMPANY LTD. AND IAN SPENCER; RE CJA, LOCAL 2041 .....	(Feb.) 181
Remedies - Construction Industry - Construction Industry Grievance - Practice and Procedure - Whether certain job site in Kemptville falling within geographic area assigned to Labourers' union Local 247 under collective agreement - Board applying <i>M. Sullivan &amp; Son</i> case and concluding that, under provincial agreement, no local union having exclusive jurisdiction over Kemptville - Employer not violating collective agreement when it hired from Local 527 rather than Local 247 - Grievance dismissed - Employer seeking costs - Board analyzing costs issue in detail and concluding that in section 126 proceedings, in absence of specific provision in collective agreement, Board has no jurisdiction to award legal costs as such - Board, however, directing Local 247 to reimburse employer for its share of section 126(4) expenses	
BELLAI BROTHERS LTD.; RE LIUNA, LOCAL 247; RE LIUNA, LOCAL 527 .....	(Jan.) 2



Remedies - Construction Industry - Evidence - Practice and Procedure - Related Employer - In absence of contrary pleadings or evidence, Board deeming respondents to have accepted certain facts stated in application - Board finding five respondents engaged in related activities and finding common direction and control among four respondents - Board drawing adverse inferences from lack of production and lack of evidence produced by those respondents - Single employer declaration issuing in respect of four respondents - Board distinguishing *Golden Arm Flooring* case in respect of joint and several liability where damages awarded in earlier Board proceeding against one respondent predated relationship between it and other respondents - Application in respect of fifth respondent dismissed

CENTRAL FORMING & CONCRETE INC.; ALTRACON CONSTRUCTION LIMITED; GASPO CONSTRUCTION LIMITED; ASHWORTH ENGINEERING INC.; RE CARPENTERS AND ALLIED WORKERS, LOCAL 27, CJA ..... (July)

805

Remedies - Crown Employees Collective Bargaining Act - Change in Working Conditions - Interim Relief - Unfair Labour Practice - Union alleging that employers violating statutory freeze by altering employees' pension plan and seeking interim relief pending disposition of complaint - Employers submitting that Board should not grant interim relief which is tantamount to final disposition of main complaint - Board not agreeing that interim relief never appropriate in such circumstances - Board satisfied that balance of harm favouring union and that interim relief should be granted - Board directing employers to provide bargaining unit employees with pension plan equivalent to Public Service Pension Plan pending disposition of unfair labour practice complaint

BEEF IMPROVEMENT ONTARIO INCORPORATED, THE CROWN IN RIGHT OF ONTARIO (AS REPRESENTED BY THE ONTARIO MINISTRY OF AGRICULTURE AND FOOD) AND ONTARIO SWINE IMPROVEMENT ONTARIO INCORPORATED AND; RE OPSEU; RE GROUP OF EMPLOYEES..... (Apr.)

341

Remedies - Discharge - Discharge for Union Activity - Interim Relief - Board reinstating discharged resident superintendents on interim basis pending disposition of unfair labour practice complaint - Board clarifying that interim reinstatement involving both previous benefits of employment (including residence) and obligations

SHELTER CANADIAN PROPERTIES LIMITED; RE USWA..... (Apr.)

482

Remedies - Discharge - Discharge for Union Activity - Interim Relief - Practice and Procedure - Unfair Labour Practice - Board discussing importance of filing full and complete declarations in applications for interim relief - Board directing that two of three discharged employees be reinstated pending determination of unfair labour practice complaint - Board determining that balance of harm weighing in employer's favour in respect of third discharged employee

SHIRLON PLASTICS INC.; RE UFCW, AFL/CIO, CLC ..... (Aug.)

1086

Remedies - Discharge - Discharge for Union Activity - Interim Relief - Trade Union - Trade Union Status - Employees discharged after signing letter setting out dissatisfaction with working conditions and asking employer to recognize them in representative capacity - Employees filing unfair labour practice complaint and seeking interim reinstatement - Employer asking Board to dismiss interim relief application and unfair labour practice complaint on ground that employees not engaged in trade union activity - Board satisfied that arguable case made out that employees attempting to establish association that might have acquired characteristics of "trade union" under the *Act* and that terminations motivated, at

least in part, by their participation in effort to negotiate collectively with their employer - Balance of harm favouring granting relief - Interim reinstatement ordered	
MINIWORLD MANAGEMENT, OPERATING AS NORTH YORK INFANT NURSERY AND PRESCHOOL; RE MADELENE ALAGANO, CATALINA ALVAREZ, ELIZABETH ARAUJO, ELEN BUCKLEY, SUZANNA CABRAL AND SUSAN CHISLETT .....	(Apr.) 455
Remedies - Discharge - Discharge for Union Activity - Interim Relief - Unfair Labour Practice - Board directing employer to provide work to its employees equivalent to number of hours provided when operating two full shifts until Board determining if lay-off of 23 employees legitimate	
EARNWAY INDUSTRIES (CANADA) LTD.; RE IWA CANADA .....	(Nov.) 1511
Remedies - Discharge - Discharge for Union Activity - Interim Relief - Unfair Labour Practice - Board directing interim reinstatement of employee discharged during union organizing campaign	
COOPER INDUSTRIES (CANADA) INC.; RE USWA .....	(Mar.) 225
Remedies - Discharge - Discharge for Union Activity - Interim Relief - Unfair Labour Practice - Union filing complaint in respect of discharge of inside organizer and seeking interim reinstatement - Board not regarding three week delay in bringing application as substantial - Balance of harm weighing in union's favour - Board directing that employee be reinstated pending determination of complaint and that Board notice be posted in workplace	
INTERCON SECURITY LIMITED; RE COMMUNICATION, ENERGY AND PAPERWORKERS UNION OF CANADA.....	(Sept.) 1228
Remedies - Duty of Fair Referral - Intimidation and Coercion - Unfair Labour Practice - Applicant working as owner-operator under agreement between Pipe Line Contractors and Teamsters' union - Board concluding that union's actions in introducing rotation system, referring applicant to Deep River following lay-off from Stittsville loop, handling of applicant's grievance and various other matters not violating union's duty of fair referral - Board finding that union's refusal to allow applicant to pay union dues, renew membership and restore name to dispatch list designed to penalize him for filing complaint with the Board, contrary to section 82(2) of the <i>Act</i> - Union directed to compensate applicant for lost earnings and to restore applicant's name to dispatch list upon his tendering payment of outstanding dues	
LOUIS LAUZON; RE TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 91 .....	(June) 717
Remedies - Duty to Bargain in Good Faith - Interim Relief - Unfair Labour Practice - Board making interim order directing employer to permit union to post notice of union meetings and information concerning collective bargaining - Employer directed to immediately post notice of union membership meeting produced by union at hearing - Employer also directed to meet with union's bargaining committee within 14 days in order that parties bargain in good faith and make every reasonable effort to make a collective agreement	
REYNOLDS-LEMMERZ INDUSTRIES; RE CAW - CANADA .....	(Nov.) 1578
Remedies - Duty to Bargain in Good Faith - Interim Relief - Unfair Labour Practice - Union alleging violation of employer's duty to bargain in good faith in failing to disclose during bargaining <i>de facto</i> decision to close logging camp - Union seeking interim order that camp be re-opened - Interim order would require employer to return heavy equipment already moved out, and to reverse notification, bumping a re-assignment process that had already	

taken place - Union failing to act promptly in filing its application with Board - Balance of harm weighing in respondent's favour - Application dismissed

AVENOR INC.; IWA CANADA, LOCAL 2693 ..... (Apr.) 340

Remedies - Interference in Trade Unions - Interim Relief - Intimidation and Coercion - Trusteeship - Unfair Labour Practice - Union Successor Status - Local 75 of Hotel employees' union purporting to disaffiliate from union - Local placed under trusteeship - Local 75 filing unfair labour practice complaint against union and named employer in connection with employer's decision to retain dues in escrow - Local 75 seeking interim order directing employer to remit dues to it - In response to Local 75's application, union filing its own unfair labour practice complaint, its own successor rights application under section 63 of the Act, and its own interim relief application - Board not persuaded that any interim order warranted at this stage - Application for interim relief dismissed

WESTBURY HOWARD JOHNSON HOTEL ["THE WESTBURY"], AND H.E.R.E. ["THE PARENT UNION"]; RE H.E.R.E., LOCAL 75 ["LOCAL 75"] ..... (Aug.) 1166

Remedies - Interference in Trade Unions - Interim Relief - Intimidation and Coercion - Unfair Labour Practice - Union seeking interim relief in connection with unfair labour practice complaint alleging that demotion of employee from group leader position violating the Act - Board directing that employee be reinstated to his position on interim basis pending final disposition of unfair labour practice complaint

LEO SAKATA ELECTRONICS (CANADA) LTD.; RE IWA CANADA ..... (Oct.) 1359

Remedies - Interim Relief - Picketing - Employer making application under section 11.1 of the Act for restrictions with respect to picketing - Employer seeking interim order restricting the picketing pending determination of its section 11.1 application - Balance of harm weighing against making interim order sought - Application for interim relief dismissed

THE GREAT ATLANTIC & PACIFIC COMPANY OF CANADA LIMITED; RE UFCW, LOCALS 175 AND 633 AND SHELLY FAIR SERVICE, SCOTT CONSTABLE, PEGGY SWIFT AND GARY DIMOCK ..... (Aug.) 1119

Remedies - Interim Relief - Unfair Labour Practice - Union seeking interim reinstatement of 28 employees laid off as result of employer's decision to contract out warehousing operations - Union's delay in bringing interim relief application and other factors weighing against making interim order - Application dismissed

WILLIAM NEILSON LTD.; RE MILK AND BREAD DRIVERS, DAIRY EMPLOYEES CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647 ..... (Mar.) 326

Remedies - Related Employer - Bargaining Rights - Company "A" acquiring companies "B" and "C" - Union holding bargaining rights at one of B's locations - A consolidating warehouse operations at C's location - B's unionized work transferred to C's non-union workforce, but no employees of B actually transferred - Collective agreement providing that where part of operation transferred to new location within 50 mile radius of plant, employer will recognize union as bargaining agent for those operations - Union seeking single employer declaration - Employer asking Board to exercise its discretion against making the declaration - Board declaring companies A, B and C to be one employer for purposes of the Act, but restricting declaration to warehouse operations at company B location

GROUPE SCHNEIDER S.A., SCHNEIDER CANADA INC., MERLING GERIN LTD. (FEDERAL PIONEER DIVISION), AND SQUARE D COMPANY OF CANADA; RE COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA, LOCAL 521 ..... (Feb.) 142

Remedies - Sale of a Business - CNE and Labourers' union bound to collective agreement covering cleaners working at various buildings at Exhibition Place - CNE leasing one of those



buildings to business (Medieval Times) providing dinner and entertainment - Medieval Times using cleaning contractor to perform cleaning services - Board satisfied that criteria in section 64.2 of the Act proved, that "premises" encompassing entirety of Exhibition Place, that CNE had ceased to provide certain cleaning services and that substantially similar services provided by "another employer" - Application allowed - Board declaring that sale of a business deemed to have resulted from CNE to Medieval Times - Board also declaring that Medieval Times bound by notice to bargain delivered by Labourers' union to CNE

MEDIEVAL TIMES DINNER & TOURNAMENT (TORONTO) INC.; RE LIUNA, LOCAL 506 ..... (July)

865

Representation Vote - Bargaining Unit - Certification - Employee - Practice and Procedure - Parties disputing status of certain individuals - Board rejecting union's submission that doctrines of *res judicata* or issue estoppel applying to prevent employer from taking position different from position taken in union's earlier certification application - Board rejecting employer's submission that in circumstances of the case, including its assertion that union's support barely over 55%, representation vote should be ordered - Board revoking appointment of Labour Relations Officer and directing hearing before panel of Board in order to expedite resolution of bargaining unit configuration issues

REYNOLDS-LEMMERZ INDUSTRIES; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA); RE GROUP OF EMPLOYEES ..... (Sept.)

1242

Representation Vote - Certification - Charges - Signing of "Consent and Waiver" form precluding employer from relying on alleged union improprieties which it was aware of on date of vote in order to set aside representation vote - Board, in any event, determining that employer's allegations even if true would not lead to dismissal of certification application or ordering of new vote, as requested by employer - Certificate issuing

THE CANADIAN RED CROSS SOCIETY (ONTARIO DIVISION); RE SEU, LOCAL 210 ..... (Nov.)

1592

Representation Vote - Certification - Construction Industry - Employee filing objection and asking Board to conduct new representation vote on ground that he made mistake in marking ballot - Employee alleging that instructions on ballot confusing - Board concluding that any confusion on employee's part not attributable to form of ballot or instructions given to voters - Certificates issuing

WINDSOR ELEVATOR SERVICE INC.; RE INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS, LOCAL NO. 90; RE CONSTRUCTION WORKERS, LOCAL 53, CLAC ..... (Mar.)

334

Representation Vote - Certification - Practice and Procedure - Union objecting to results of representation vote on grounds that certain individual ("A") ought not to have voted and that certain other individual ("B") was not on voters list, but ought to have been - Union and employer making full written representations in respect of objections - Union seeking oral hearing - Board satisfied that oral hearing unnecessary to determine objections raised by union - Board concluding that, having agreed to count A's ballot at the time of the vote, union ought not to be permitted to resile from its agreement and challenge A's status after ballots were counted - Board similarly concluding that having agreed to composition of voters' list, and having certified that all eligible voters had had opportunity to vote, union ought not to be permitted to assert that B was eligible voter - Board declining to order second representation vote - Certification application dismissed

HIGHLAND PACKERS LIMITED; UFCW, AFL, CIO, CLC ..... (Apr.)

434

Right of Access - Picketing - Strike - Strike Replacement Workers - Unfair Labour Practice -

Board finding that company violated section 73.1 of the *Act* by using managers from non-struck stores to perform bargaining unit work at struck locations - Board making declaration and issuing cease and desist order - Employer seeking order restricting picketing at struck locations - Board analyzing provisions of section 11.1 of the *Act* and discussing Board's dual role in protecting statutory right to picket and in limiting exercise of that right in particular circumstances - Board finding evidence insufficient to persuade it that restrictions on picketing appropriate to prevent undue disruption of employer's operations - Application under section 11.1 of the *Act* dismissed

THE GREAT ATLANTIC & PACIFIC COMPANY OF CANADA LIMITED; RE UFCW, LOCALS 175 AND 633, BRIAN DONAGHY, DARRIN FAY, FRANK FORTUNATO, RICK FOX, HELMUT HALLA, ROBERT LIOTTI, DONALD LUPTON, GENE MARTIN, PAM MURDOK, PATRICIA O'DOHERTY, KATHY PAPA-CONSTANTINO, IRENE PARK AND CLIFF SKINNER .....(Mar.)

303

Sale of a Business - Abandonment - Bargaining Rights - Crown Transfer - Ministry of Health revoking nursing home's licence, taking over nursing home and operating it for 3 years - Ministry of Health calling for and receiving proposals for licensed beds lost due to earlier revocation and awarding beds to a number of licensees, including "HG" - Board finding that part of Crown undertaking had been transferred to "HG", that there were valid bargaining rights to be transferred and that an intermingling of employees had occurred - Board finding that predecessor's collective agreement would have applied at time "HG" started combined operation in 1991 without a vote had *Crown Transfer Act* been applied as it should have been - Evidence not supporting submission that union had abandoned its bargaining rights - Application under *Crown Transfer Act* allowed

HERITAGE GREEN SENIOR CENTRE, SAINT ELIZABETH HOME SOCIETY, ONTARIO MINISTRY OF HEALTH AND; RE SEIU, LOCAL 532 .....(Apr.)

419

Sale of a Business - Abandonment - Bargaining Rights - Union alleging that transfer of inactive sawmill amounting to sale of a business - Alleged successor employer arguing that union had abandoned its bargaining rights before the transfer and that it had purchased mere "assets", not a "business" - Collective agreement made in 1984 terminated and no replacement or renewal agreement entered into - Evidence of union's continuing interest and activity satisfying Board that union had not abandoned bargaining rights - Seven year hiatus between closure of mill and sale not detracting from conclusion that successor purchasing capacity to carry on the business formerly conducted by predecessor in relation to the mill - Board declaring that union continuing to be bargaining agent in respect of sawmill operations as if successor were predecessor

LONG LAKE FOREST PRODUCTS INC., AND KIMBERLY CLARK FOREST PRODUCTS INC.; RE IWA CANADA LOCAL 2693; RE GINOOGAMING FIRST NATION AND LONG LAKE EMPLOYEES ASSOCIATION ..... (Oct.)

1343

Sale of a Business - Bargaining Rights - Bargaining Unit - St. Joseph's Hospital transferring laboratory services to Brantford General Hospital - Hospitals acknowledging that transfer constituting "sale of a business" - Board finding intermingling of employees and determining that unit of all paramedical employees (and not only those employed in "stat" laboratory) constituting appropriate bargaining unit - Transferred employees representing less than 5 percent of all paramedical employees of Brantford General Hospital - Board declining to direct taking of representation vote - Board declaring that union no longer the bargaining agent for any Brantford General Hospital laboratory employees

THE BRANTFORD GENERAL HOSPITAL, ST. JOSEPH'S HOSPITAL, BRANTFORD AND; RE OPSEU.....(Aug.)

1103

Sale of a Business - Certification - Change in Working Conditions - Natural Justice - Practice and Procedure - Unfair Labour Practice - Union alleging that employer violating statutory

freeze - Employer acknowledging its status as "successor employer" by virtue of section 64.2 of the *Act*, but arguing that Board ought to dismiss complaint due to union's 3 1/2 month delay in bringing complaint - Employer also submitting that statutory freeze not applying to it because it never received notice of union's certification application - Board declining to dismiss for delay and finding that statutory freeze applying to successor employer under section 64(3) of the *Act* - Employer's preliminary motions dismissed

GROUP 4 C.P.S. LIMITED; RE USWA..... (Apr.) 400

Sale of a Business - Construction Industry - Applicant union submitting that certain alleged "key persons" were so essential to business of "predecessor" that their departure to form new "successor" company constitution sale of business within meaning of section 64 of the *Act* - Board finding that alleged "key persons" not in fact "key" to business of "predecessor" - Applications dismissed

MERIT CONTRACTORS OF NIAGARA, STEWART & HINAN CONTRACTORS LIMITED, STUCOR CONSTRUCTION LTD., DAVID J. HARVEY, DENNIS R. KOWALCHUK AND VERNON R. THORPE C.O.B. AS; RE CJA, LOCAL 18 .. (Feb.) 152

Sale of a Business - Construction Industry - Construction Industry Grievance - Related Employer - Board finding successor's owner to be quintessential "key person" and finding sale of a business under section 64 of the *Act* - Board also making related employer declaration under section 1(4) of the *Act*

STEELES ELECTRIC, ELI'S ELECTRIC SERVICE, TOWN AND COUNTRY ELECTRIC LTD., TOWN AND COUNTRY ELECTRIC, STEELES ELECTRIC, E & E STEELES ELECTRIC LTD. C.O.B. AS E & E STEELES ELECTRIC C.O.B. AS; RE IBEW, LOCAL 353..... (May) 603

Sale of a Business - Construction Industry - Predecessor company operating as general contractor in school construction field in ICI sector - Officers and shareholders of predecessor leaving company to set up new company and entering very same market as predecessor - Applicant delaying six or seven years in bringing application - Board finding sale of a business - Application allowed

AQUICON CONSTRUCTION CO. LTD., BONDFIELD CONSTRUCTION COMPANY (1983) LIMITED AND 352021 ONTARIO LIMITED; RE L.I.U.N.A., LOCAL 837 ..... (Dec.) 1611

Sale of a Business - Construction Industry - Related Employer - Board not accepting union's characterization of certain individual as "key man" during relevant period - Two and one half years separating departure of alleged "key man" from company A and his joining company B - Company A continuing to grow and prosper following departure of alleged "key man" - Sale of a business and related employer applications dismissed

TRI-CORPS INDUSTRIAL CONTRACTORS, INDUSTRIAL LABOUR CORPS. INC., SCOTRON HOLDINGS INC., CHRISTMAN & LEITCH CONTRACTORS LTD., CHRISTMAN & ASSOCIATES CONTRACTORS LTD.; RE THE MILLWRIGHT DISTRICT COUNCIL OF ONTARIO ON ITS OWN BEHALF AND ON BEHALF OF LOCAL 1916..... (Oct.) 1446

Sale of a Business - Judicial Review - Unfair Labour Practice - Respondent appointed by Ontario Court (General Division) as receiver and manager of nursing home in December 1991 - Union complaining that respondent failing to adhere to collective agreement between union and nursing home and refusing to bargain with union - Board finding respondent to be successor employer for purposes of of the *Act* - Board remitting issues to parties for consider-



ation and remaining seized - Receiver's application for judicial review dismissed by Divisional Court

DELOITTE & TOUCHE INC., IN ITS CAPACITY AS COURT APPOINTED RECEIVER AND MANAGER OF OTTAWA NURSING CENTRE NURSING HOME, AND NOT IN ITS PERSONAL CAPACITY; RE CUPE, LOCAL 1343 ... (Nov.) 1608

Sale of a Business - Practice and Procedure - Union alleging sale of a business under section 64.2 of the Act and pleading material facts sufficient to ground the application - Respondent not filing reply - Board applying Rule 19 and deeming respondent to have accepted facts set out in application - Board declaring sale of a business

LENCAN INVESTIGATION SERVICES INC.; RE USWA ..... (Nov.) 1547

Sale of a Business - Reference - Union representing predecessor hotel's employees alleging sale of a business - Board satisfied that alleged successor purchased certain assets from predecessor, but that ongoing enterprise not transferred - Board finding that predecessor operated hotel business and that alleged successor operating restaurant business and acting as landlord - Board finding no sale of business - Board advising Minister that alleged successor not bound by predecessor's collective agreement with union

SANFORDS ROADHOUSE RESTAURANT; RE THE HOSPITALITY, COMMERCIAL AND SERVICE EMPLOYEES UNION, LOCAL 73 ..... (July) 897

Sale of a Business - Remedies - CNE and Labourers' union bound to collective agreement covering cleaners working at various buildings at Exhibition Place - CNE leasing one of those buildings to business (Medieval Times) providing dinner and entertainment - Medieval Times using cleaning contractor to perform cleaning services - Board satisfied that criteria in section 64.2 of the Act proved, that "premises" encompassing entirety of Exhibition Place, that CNE had ceased to provide certain cleaning services and that substantially similar services provided by "another employer" - Application allowed - Board declaring that sale of a business deemed to have resulted from CNE to Medieval Times - Board also declaring that Medieval Times bound by notice to bargain delivered by Labourers' union to CNE

MEDIEVAL TIMES DINNER & TOURNAMENT (TORONTO) INC.; RE LIUNA, LOCAL 506 ..... (July) 865

Sale of a Business - Security Guards - Predecessor providing security services to condominium building - Successor characterizing its operations as reception functions - Successor seeking to distinguish between concierge and patrol services - Board finding services provided by successor to be security services, that those services related to servicing the premises under section 64.2 of the Act, and that services provided by successor substantially similar to those provided by predecessor

CANADIAN CORPS OF COMMISSIONAIRES (TORONTO AND REGION); RE USWA ..... (Apr.) 353

Sale of a Business - Successor security company contracting to provide services at three locations where employees already represented by USWA - Successor having collective agreement with CSU including municipality-wide bargaining unit - USWA and CSU each asserting bargaining rights at the three locations - Board exercising authority under section 64(6) of the Act and declaring that employees at the three locations bound by collective agreement between successor and CSU

ENSIGN SECURITY SERVICES INC.; RE USWA AND CANADIAN SECURITY UNION; RE PINKERTON'S OF CANADA LIMITED AND BURNS INTERNATIONAL SECURITY SERVICES LIMITED ..... (Oct.) 1310

Sale of a Business - Union alleging "sale of a business" where municipality cancelling its contract

- with transit company and “taking back” operation of municipality’s transit system - Transit company found in earlier Board decision to be federal undertaking - *Labour Relations Act* amendments providing in section 64.1 that successor rights provisions applying to federal-to-provincial sales, but amendments coming into force only on January 1, 1993 - Respondents asserting that transaction occurred on December 31, 1992 and that section 64.1 of the Act having no application - Respondents also denying that transaction amounting to “sale of a business” - Board satisfied that by acquiring substantial part of work force previously employed by transit company, municipality transferring to itself an essential element of that business - Board concluding that municipality’s hiring of employees on and after January 1, 1993 triggering sale and that section 64.1 of the Act applying to the transaction - Board finding and declaring sale of a business
- CHARTERWAYS TRANSPORTATION LIMITED, THE CORPORATION OF THE TOWN OF AJAX; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 222 ..... (Oct.) 1296
- Sale of a Business - Union alleging that lease of operation of motel’s restaurant, bar and banquet facilities amounting to sale of a business - Motel agreeing to material facts in its response, but lessee not filing response - Pursuant to Rule 19 Board relying on facts set out in application, agreed to in motel’s response and undisputed by lessee to find lessee to be successor employer within meaning of section 64 of the Act
- SYL-SHAR HOLDINGS INC.; RE USWA ..... (Nov.) 1591
- School Boards and Teachers Collective Negotiations Act - Charter of Rights and Freedoms - Constitutional Law - Duty of Fair Representation - Unfair Labour Practice - Board rejecting submission that section 2(1)(f) of the *Labour Relations Act* violating section 7 of the Charter by depriving teachers of the right to bring complaints of unfair representation against their bargaining agent - Board without jurisdiction to deal with application - Application dismissed
- GRANT TADMAN; RE ONTARIO ENGLISH CATHOLIC TEACHERS’ ASSOCIATION TORONTO SECONDARY UNIT; RE METROPOLITAN SEPARATE SCHOOL BOARD ..... (Aug.) 1096
- Security Guard - Bargaining Unit - Certification - Combination of Bargaining Units - Union seeking to combine newly certified unit of security guards with pre-existing all-employee unit of municipality’s employees - Parties requesting that Board first determine whether security guards monitor other employees so as to give rise to conflict of interest if included in those employees’ bargaining unit - Board satisfied that monitoring of other employees by guards raising real possibility of conflict of interest if guards included in same bargaining unit - Application remitted back to parties
- THE MUNICIPALITY OF METROPOLITAN TORONTO; RE CUPE, LOCAL 79..... (June) 795
- Security Guard - Bargaining Unit - Certification - Union applying to represent employees of security company - Union proposing that bargaining unit encompass all employees and employer proposing that unit be confined to security guards - Union asserting that unit should be limited to Regional Municipality of Sudbury and employer asserting that unit should encompass entire District of Sudbury - Board reviewing principles to be applied in determining bargaining unit appropriateness - Board observing that all employees share “community of interest” by virtue of working for same employer and that “real life collective bargaining” able to accommodate groups with very different duties and conditions - Union’s proposed bargaining unit found to be appropriate - Certificate issuing
- BURNS INTERNATIONAL SECURITY SERVICES LIMITED; RE USWA; RE GROUP OF EMPLOYEES ..... (Apr.) 347

- Security Guards - Bargaining Unit - Certification - Employee - Board determining that “site supervisors” employed by security firm not exercising managerial functions within meaning of section 1(3) of the *Act* - “Site supervisors” included in bargaining unit - Final certificate issuing
- WACKENHUT OF CANADA LIMITED; RE USWA .....(Jan.) 91
- Security Guards - Bargaining Unit - Certification - Union applying to represent employer’s security guards - Union already representing employees of employer in one of ten existing bargaining units - Board rejecting employer’s argument that bargaining unit of security guards inappropriate if represented by any of various bargaining agents already representing other company employees, but particularly the applicant - Certificate issuing
- B A BANKNOTE A DIVISION OF QUEBECOR PRINTING INC.; RE IAM .....(Nov.) 1484
- Security Guards - Sale of a Business - Predecessor providing security services to condominium building - Successor characterizing its operations as reception functions - Successor seeking to distinguish between concierge and patrol services - Board finding services provided by successor to be security services, that those services related to servicing the premises under section 64.2 of the *Act*, and that services provided by successor substantially similar to those provided by predecessor
- CANADIAN CORPS OF COMMISSIONAIRES (TORONTO AND REGION); RE USWA .....(Apr.) 353
- Settlement - Certification - Construction Industry - Membership Evidence - Reconsideration - Union certified after entering into minutes of settlement with employer regarding description of bargaining unit and list of employees at work on application date - Employer seeking reconsideration of certification decision and relying on various grounds, including assertion that it had not received legal advice prior to signing settlement document, that it included specimen signatures for only 4 of 5 employees on the list and that it did so only after the terminal date - Employer also alleging non-sign - Board finding no basis for doubting reliability of membership evidence filed or for reconsidering its decision on any other basis - Reconsideration application dismissed
- MARLI MECHANICAL LTD.; RE UA, LOCAL UNION 46 .....(June) 725
- Settlement - Change in Working Conditions - Discharge - Discharge for Union Activity - *Hospital Labour Disputes Arbitration Act*- Interim Relief - Remedies - Unfair Labour Practice - Union certified three years earlier and still without first collective agreement - Union making unfair labour practice complaint in respect of work reorganization (“alternative placement”) and lay-offs affecting one-half of the bargaining unit - Union alleging that employer’s conduct motivated by anti-union *animus*, breaching statutory freeze and violating minutes of settlement of earlier complaint - Union seeking interim order preserving *status quo* pending disposition of unfair labour practice complaint or until interest arbitration award issued - Employer implementing impugned changes after notice of union’s interim relief application, but before Board hearing - Board concluding that balance of harm weighing in favour making interim order - Employer directed to restore and maintain *status quo* with respect to bargaining unit jobs pending disposition of union’s complaint
- THE MISSISSAUGA HOSPITAL; RE THE PRACTICAL NURSES FEDERATION OF ONTARIO .....(July) 934
- Settlement - Construction Industry - Construction Industry Grievance - Judicial Review - Labour-Management Relations Committee hearing grievance at Step 3 of grievance procedure and issuing decision - Union submitting that matter in dispute thereby settled pursuant to grievance procedure set out in collective agreement - Board upholding union’s preliminary



motion, concluding that grievance settled, and directing employer to comply with terms of settlement - Employer's application for judicial review dismissed by Divisional Court

E.S. FOX LIMITED; RE MILLWRIGHT DISTRICT COUNCIL OF ONTARIO ON ITS OWN BEHALF AND ON BEHALF OF ITS LOCAL 1007 AND OLRB .....(Nov.)

1609

Settlement - Employer - Interference in Trade Unions - Intimidation and Coercion - Judicial Review - Stay - Strike - Strike Replacement Workers - Unfair Labour Practice - "Home Cares" contracting with various "service provider" agencies, including Red Cross, to provide various therapeutic and support services to clients in their homes - Red Cross employees commencing legal strike - Home Cares arranging for other service providers to attend to clients - Union alleging breach of statutory ban on use by employer of strike replacement workers - Board not accepting union's argument that Home Cares actually true "employer" in this case or that Home Cares and service providers "acting on behalf" of Red Cross - Applications under section 73.1 and 73.2 dismissed - Board finding that letter sent to Red Cross employees suggesting that employees might lose their jobs if they commenced or stayed on strike violating the Act - Red Cross applying for judicial review on ground that subject matter of Board's unfair labour practice finding had been settled by parties and withdrawn - Red Cross seeking stay of Board's decision pending determination of judicial review application - Stay application dismissed

THE CANADIAN RED CROSS SOCIETY (ONTARIO DIVISION); RE ONTARIO LABOUR RELATIONS BOARD AND THE SERVICE EMPLOYEES INTERNATIONAL UNION, LOCALS 204 AND 532 ..... (Oct.)

1466

Settlement - Ratification and Strike Vote - Reconsideration - Strike - Strike Replacement Workers - Unfair Labour Practice - Employer seeking reconsideration of Board decision finding that employer unlawfully using strike replacement workers - Board not permitting employer to resile from its earlier agreement with union that conditions in subsections 73.1(2) and (3) had been met - Reconsideration application dismissed

MARRIOTT MANAGEMENT SERVICES; RE CUPE AND ITS LOCAL 229 .....(Aug.)

1018

Specified Replacement Workers - Strike - Strike Replacement Workers - Ten stationary engineers employed at brewery's power plant commencing lawful strike - Employer using two managers from struck location, plus a third manager from non-struck location to do the struck work - Union applying for directions under section 73(12) of the Act in respect of use of third manager - Power plant requiring presence of stationary engineer 24 hours per day, 7 days per week - Scheduling for power plant normally involving three employees in 24 hour period each working 8 hours, with fourth employee to provide for days off - Employer asserting right to use, in addition to its two managers from the struck location, two specified replacement workers pursuant to section 73.2(3) to enable it to prevent danger to life, health or safety, destruction or serious deterioration of equipment or premises, or serious environmental damage - Board concluding that employer not satisfying its onus under section 73.2(15) and therefore not entitled to use specified replacement workers

LABATT'S ONTARIO BREWERIES, DIVISION OF LABATT BREWING COMPANY LIMITED; RE IUOE, LOCAL 772; RE BREWERY GENERAL AND PROFESSIONAL WORKERS' UNION ..... (June)

704

Stay - Bargaining Unit - Certification - Judicial Review - Practice and Procedure - Following participation in certification waiver programme and after agreeing on a number of issues related to union's certification application (including bargaining unit description), parties apparently agreeing to waive hearing - Legal identity of employer only issue apparently outstanding - Employer subsequently retaining new counsel, seeking to file additional materials and advising Board of its intention to attend officer meeting and Board hearing - Employer asking Board to find appropriate bargaining unit to be one other than that which had earlier been agreed to by the parties - Employer relying on fact that Waiver of Hearing

Form A-5 not submitted for proposition that it had not agreed to waive hearing - Board not permitting employer to resile from agreement on bargaining unit - Board finding agreed-upon unit appropriate - Board indicating that it will consider employer request, if made, for hearing on question of legal identity of employer - Employer applying for judicial review on ground that Board declined jurisdiction to determine appropriate bargaining unit - Employer applying for stay pending judicial review - Stay application dismissed by Divisional Court

GLAZIER MEDICAL CENTRE; RE ONA AND THE OLRB ..... (June) 802

Stay - Certification - Interim Relief - Practice and Procedure - Reconsideration - Employer applying for reconsideration of "bottom line" decision to certify union and seeking interim order staying Board's decision pending issuance of reasons for decision - Board explaining importance of avoiding delay in labour relations and practice of issuing "bottom line" decisions with reasons to follow - Balance of harm weighing against staying Board's decision - Application dismissed

ROYALGUARD VINYL CO., A DIVISION OF ROYPLAST LIMITED; RE USWA ..... (June) 775

Stay - Employer - Interference in Trade Unions - Intimidation and Coercion - Judicial Review - Settlement - Strike - Strike Replacement Workers - Unfair Labour Practice - "Home Cares" contracting with various "service provider" agencies, including Red Cross, to provide various therapeutic and support services to clients in their homes - Red Cross employees commencing legal strike - Home Cares arranging for other service providers to attend to clients - Union alleging breach of statutory ban on use by employer of strike replacement workers - Board not accepting union's argument that Home Cares actually true "employer" in this case or that Home Cares and service providers "acting on behalf" of Red Cross - Applications under section 73.1 and 73.2 dismissed - Board finding that letter sent to Red Cross employees suggesting that employees might lose their jobs if they commenced or stayed on strike violating the Act - Red Cross applying for judicial review on ground that subject matter of Board's unfair labour practice finding had been settled by parties and withdrawn - Red Cross seeking stay of Board's decision pending determination of judicial review application - Stay application dismissed

THE CANADIAN RED CROSS SOCIETY (ONTARIO DIVISION); RE ONTARIO LABOUR RELATIONS BOARD AND THE SERVICE EMPLOYEES INTERNATIONAL UNION, LOCALS 204 AND 532 ..... (Oct.) 1466

Strike - Change in Working Conditions - Employee - Ratification and Strike Vote - Strike Replacement Workers - Unfair Labour Practice - Union's compliance with section 74(5) of Act arising in context of strike replacement application - Whether laid off employee with only possibility of recall entitled to participate in strike vote - Parties agreeing that individual entitled to vote only if found to be employee in bargaining unit - Board finding individual without sufficiently substantial employment attachment to be considered employee within bargaining unit with entitlement to vote - Board finding that employer carrying on business as before in hiring students who had worked for it for the last 4 summers and not recalling individual from lay-off who had worked for it for three weeks almost one year earlier - Applications alleging violation of statutory freeze and violation of strike replacement ban dismissed

GOULARD LUMBER (1971) LIMITED, MARK GOULARD AND ROMEO GOULARD RE IWA-CANADA, LOCAL 1-2693 AND LEO LAFLEUR ..... (Oct.) 1334

Strike - Continuation of Benefits - Practice and Procedure - Unfair Labour Practice - Reconsideration - Board determining that under section 81.1 of the Act, union entitled to tender payments for selected benefits - Employer directed to provide union with information respecting amounts necessary to continue benefits selected by union - Employer applying for

reconsideration on ground that Board without jurisdiction to make its production order and on ground that Board was required to first determine whether union had tendered any payment before making any order or direction - Reconsideration application dismissed

PARTEK INSULATIONS LTD.; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 456 ..... (Feb.)

167

Strike - Employer - Interference in Trade Unions - Intimidation and Coercion - Judicial Review - Settlement - Stay - Strike Replacement Workers - Unfair Labour Practice - "Home Cares" contracting with various "service provider" agencies, including Red Cross, to provide various therapeutic and support services to clients in their homes - Red Cross employees commencing legal strike - Home Cares arranging for other service providers to attend to clients - Union alleging breach of statutory ban on use by employer of strike replacement workers - Board not accepting union's argument that Home Cares actually true "employer" in this case or that Home Cares and service providers "acting on behalf" of Red Cross - Applications under section 73.1 and 73.2 dismissed - Board finding that letter sent to Red Cross employees suggesting that employees might lose their jobs if they commenced or stayed on strike violating the Act - Red Cross applying for judicial review on ground that subject matter of Board's unfair labour practice finding had been settled by parties and withdrawn - Red Cross seeking stay of Board's decision pending determination of judicial review application - Stay application dismissed

THE CANADIAN RED CROSS SOCIETY (ONTARIO DIVISION); RE ONTARIO LABOUR RELATIONS BOARD AND THE SERVICE EMPLOYEES INTERNATIONAL UNION, LOCALS 204 AND 532 ..... (Oct.)

1466

Strike - Employer - Interference in Trade Unions - Intimidation and Coercion - Strike Replacement Workers - Unfair Labour Practice - "Home Cares" contracting with various "service provider" agencies, including Red Cross, to provide various therapeutic and support services to clients in their homes - Red Cross employees commencing legal strike - Home Cares arranging for other service providers to attend to clients - Union alleging breach of statutory ban on use by employer of strike replacement workers - Board not accepting union's argument that Home Cares actually true "employer" in this case or that Home Cares and service providers "acting on behalf" of Red Cross - Applications under sections 73.1 and 73.2 dismissed - Board finding that letter sent to Red Cross employees suggesting that employees might lose their jobs if they commenced or stayed on strike violating the Act

RED CROSS SOCIETY ONTARIO DIVISION, THE CANADIAN, VICTORIAN ORDER OF NURSES BRANT-HALDIMAND-NORFOLK, COMCARE (CANADA) LIMITED, MED CARE PARTNERSHIP, THE VISITING HOMEMAKERS ASSOCIATION OF HAMILTON-WENTWORTH, HAMILTON-WENTWORTH HOME CARE PROGRAM - VICTORIAN ORDER OF NURSES AND VICTORIAN ORDER OF NURSES RESPITE PROGRAM, THE REGIONAL MUNICIPALITY OF HAMILTON-WENTWORTH, OLSTEN HEALTH CARE SERVICES, MEDICAL PERSONNEL POOL (HAMILTON) LTD., MOHAWK MEDICAL SERVICES, PARA-MED HEALTH SERVICES AND BRANT COUNTY HOME CARE PROGRAM, VETERANS AFFAIRS CANADA; RE S.E.I.U., LOCAL 204 AND LOCAL 532 ..... (Jan.)

34

Strike - Interference in Trade Unions - Intimidation and Coercion - Lock-Out - Strike Replacement Workers - Unfair Labour Practice - Board providing reasons for earlier bottom-line decision in respect of lock-out and violation of section 73.1 of the Act - Wearing of union T-shirts in workplace lawful activity protected by Act - Employer's refusal to allow employees wearing such T-shirts to work amounting to lock-out - Employer violating section 73.1 of the Act by using services of other employees in bargaining unit during lock-out - Board



directing employer to cease and desist from using services of employees in bargaining unit so long as lock-out continuing

MISSISSAUGA HYDRO ELECTRIC COMPANY; RE IBEW, LOCAL 636..... (Oct.) 1376

Strike - Interference in Trade Unions - Intimidation and Coercion - Lock-Out - Strike Replacement Workers - Unfair Labour Practice - Wearing of union T-shirts in workplace lawful activity protected by *Act* - Employer's refusal to allow employees wearing such T-shirts to work amounting to lock-out - Employer violating section 73.1 of the *Act* by using services of other employees in bargaining unit during lock-out - Board directing employer to cease and desist from using services of employees in bargaining unit so long as lock-out continuing

MISSISSAUGA HYDRO ELECTRIC COMPANY; RE IBEW, LOCAL 636..... (July) 883

Strike - Picketing - Strike Replacement Workers - Right of Access - Unfair Labour Practice - Board finding that company violated section 73.1 of the *Act* by using managers from non-struck stores to perform bargaining unit work at struck locations - Board making declaration and issuing cease and desist order - Employer seeking order restricting picketing at struck locations - Board analyzing provisions of section 11.1 of the *Act* and discussing Board's dual role in protecting statutory right to picket and in limiting exercise of that right in particular circumstances - Board finding evidence insufficient to persuade it that restrictions on picketing appropriate to prevent undue disruption of employer's operations - Application under section 11.1 of the *Act* dismissed

THE GREAT ATLANTIC & PACIFIC COMPANY OF CANADA LIMITED; RE UFCW, LOCALS 175 AND 633, BRIAN DONAGHY, DARRIN FAY, FRANK FORTUNATO, RICK FOX, HELMUT HALLA, ROBERT LIOTTI, DONALD LUPTON, GENE MARTIN, PAM MURDOK, PATRICIA O'DOHERTY, KATHY PAPACONSTANTINO, IRENE PARK AND CLIFF SKINNER ..... (Mar.) 303

Strike - Picketing - Unfair Labour Practice - Employer seeking order to restrict alleged "unlawful picketing" and give it access to main receiving doors of struck store - Statute directing Board to focus not on lawfulness of picketing, but to balance newly conferred statutory picketing rights with applicant's operations to avoid undue disruption - Board adopting functional approach - Board declining to impose restrictions on picketing and dismissing employer's application under section 11.1 of the *Act* - Board dismissing union's complaint that employer engaged in strike related misconduct contrary to section 73 of the *Act*

THE GREAT ATLANTIC & PACIFIC COMPANY OF CANADA LIMITED, THE PARTNERS OF MILLER THOMSON, BARRISTERS AND SOLICITORS, DIRK VAN DE KAMER; RE UFCW, LOCALS 175 AND 633 ..... (July) 909

Strike - Ratification and Strike Vote - Reconsideration - Settlement - Strike Replacement Workers - Unfair Labour Practice - Employer seeking reconsideration of Board decision finding that employer unlawfully using strike replacement workers - Board not permitting employer to resile from its earlier agreement with union that conditions in subsections 73.1(2) and (3) had been met - Reconsideration application dismissed

MARRIOTT MANAGEMENT SERVICES; RE CUPE AND ITS LOCAL 229..... (Aug.) 1018

Strike - Ratification and Strike Vote - Unfair Labour Practice - Employee complaining about secrecy of strike vote 8 weeks after the vote and 3 weeks into the strike - Board finding applicant's delay in making application to be significant and without reasonable explanation - Board exercising its discretion against inquiring further into merits of application

MARRIOTT MANAGEMENT SERVICES; RE VICTOR CARQUEZ; RE CUPE AND ITS LOCAL 229 ..... (July) 857

Strike - Ratification and Strike Votes - Reconsideration - Strike Replacement Workers - Unfair Labour Practice - Union making application in respect of alleged unlawful use replacement

workers during strike - Issue arising as to whether section 73.1 of the *Act* applying - Board not satisfied that strike vote conducted by union in accordance with section 74(4) to (6) - Unfair labour practice complaint and reconsideration application dismissed

TOROMONT INDUSTRIES LTD., TOROMONT, A DIVISION OF; RE THE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 112.....(Aug.)

1149

Strike - Specified Replacement Workers - Strike Replacement Workers - Ten stationary engineers employed at brewery's power plant commencing lawful strike - Employer using two managers from struck location, plus a third manager from non-struck location to do the struck work - Union applying for directions under section 73(12) of the *Act* in respect of use of third manager - Power plant requiring presence of stationary engineer 24 hours per day, 7 days per week - Scheduling for power plant normally involving three employees in 24 hour period each working 8 hours, with fourth employee to provide for days off - Employer asserting right to use, in addition to its two managers from the struck location, two specified replacement workers pursuant to section 73.2(3) to enable it to prevent danger to life, health or safety, destruction or serious deterioration of equipment or premises, or serious environmental damage - Board concluding that employer not satisfying its onus under section 73.2(15) and therefore not entitled to use specified replacement workers

LABATT'S ONTARIO BREWERIES, DIVISION OF LABATT BREWING COMPANY LIMITED; RE IUOE, LOCAL 772; RE BREWERY GENERAL AND PROFESSIONAL WORKERS' UNION.....(June)

704

Strike - Strike Replacement Workers - Employer applying under section 73.2(12) of the *Act* for determination that specified replacement workers necessary to prevent danger to life, health and safety in connection with anticipated strike of its cleaning employees - Company normally employing 28 full-time and two part-time cleaners at work site and having four managerial employees available to perform bargaining unit work in event of strike - Board finding that employer having sufficient managerial personnel to perform cleaning necessary to prevent danger to life, health and safety and that additional assistance in form of specified replacement workers not necessary - Application dismissed

MARRIOTT CORPORATION OF CANADA; RE OPSEU, LOCAL 241; RE MOHAWK COLLEGE OF APPLIED ARTS AND TECHNOLOGY.....(Nov.)

1558

Strike - Strike Replacement Workers - Unfair Labour Practice - Employer asserting right to have struck work performed by persons engaged, hired or transferred into pre-existing managerial positions after date of notice to bargain, so long as there is no net increase in size of employer's managerial complement - Board not accepting employer's assertion - Employer's use of various persons to perform struck found to violate *Act* - Complaint allowed - Cease and desist order issuing

MARRIOTT MANAGEMENT SERVICES; RE CUPE AND ITS LOCAL 229.....(June)

729

Strike - Strike Replacement Workers - Unfair Labour Practice - Employer submitting that preconditions for application of section 73.1 of the *Act* not met because of various aspects surrounding strike vote, including length of time between vote and calling the strike, wording of ballot and other matters - Board deciding that preconditions satisfied - Board ruling that manager who had been promoted from bargaining unit after giving of notice to bargain precluded from doing struck work - Board finding that driving not work ordinarily performed by anyone and that performance of such work during the strike not violating the *Act* - Board ruling that use of non-bargaining unit 'occasional' workers to do struck work violat-

ing the *Act* - Employer directed to cease and desist from using replacement workers in breach of section 73.1 of the *Act*

CANADA STAMPING AND DIES LIMITED; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 636.....(Mar.) 213

Strike - Strike Replacement Workers - Unfair Labour Practice - Municipal electric utility's "outside workers" striking - Employer using certain non-managerial replacement workers to perform struck work - Union alleging that employer violating *Act* by using non-managerial replacement workers from "another of the employer's places of operations" to perform work of striking employees at "place of operations in respect of which strike taking place" - Board concluding that locations at which replacement workers were working during strike and places at which they ordinarily work not constituting separate "places of operations" within meaning of section 73.1(6)1 of the *Act* - Complaint dismissed

THE HYDRO ELECTRIC COMMISSION OF THE CITY OF OTTAWA; IBEW, LOCAL 636 ..... (Sept.) 1265

Strike - Strike Replacement Workers - Unfair Labour Practice - Subsequent to commencement of strike by projectionists, manager at struck movie theatre assigned to theatre in Montreal where she worked several hundred hours as projectionist in order to complete apprenticeship - Manager then returning to struck location and doing work of striking projectionists - Board finding that assignment to struck location amounting to "transfer" within meaning of the *Act* - Employer violating *Act* by transferring manager to struck location after date of notice to bargain - Employer directed to stop using manager to do bargaining unit work

FAMOUS PLAYERS INC.; RE IATSE, LOCAL 357 ..... (Feb.) 131

Strike - Strike Replacement Workers - Union complaining about building owner's management staff doing clean-up work during strike of cleaning contractor's employees - Board concluding that building owner acting on its own behalf, not "acting on behalf of" cleaning contractor employer - Union also alleging that introduction of new machinery after commencement of strike violating *Act* - Application alleging violation of section 73.1 of the *Act* dismissed

MODERN BUILDING CLEANING INC., CENTENNIAL CENTRE OF SCIENCE AND TECHNOLOGY (THE "ONTARIO SCIENCE CENTRE") AND THE INDIVIDUALS LISTED AT SCHEDULE "A"; RE OPSEU..... (Oct.) 1390

Strike Replacement Workers - Change in Working Conditions - Employee - Ratification and Strike Vote - Strike - Unfair Labour Practice - Union's compliance with section 74(5) of *Act* arising in context of strike replacement application - Whether laid off employee with only possibility of recall entitled to participate in strike vote - Parties agreeing that individual entitled to vote only if found to be employee in bargaining unit - Board finding individual without sufficiently substantial employment attachment to be considered employee within bargaining unit with entitlement to vote - Board finding that employer carrying on business as before in hiring students who had worked for it for the last 4 summers and not recalling individual from lay-off who had worked for it for three weeks almost one year earlier - Applications alleging violation of statutory freeze and violation of strike replacement ban dismissed

GOULARD LUMBER (1971) LIMITED, MARK GOULARD AND ROMEO GOULARD RE IWA-CANADA, LOCAL 1-2693 AND LEO LAFLEUR ..... (Oct.) 1334

Strike Replacement Workers - Employer - Interference in Trade Unions - Intimidation and Coercion - Judicial Review - Settlement - Stay - Strike - Unfair Labour Practice - "Home Cares" contracting with various "service provider" agencies, including Red Cross, to provide various therapeutic and support services to clients in their homes - Red Cross employees commencing legal strike - Home Cares arranging for other service providers to attend to clients -



Union alleging breach of statutory ban on use by employer of strike replacement workers - Board not accepting union's argument that Home Cares actually true "employer" in this case or that Home Cares and service providers "acting on behalf" of Red Cross - Applications under section 73.1 and 73.2 dismissed - Board finding that letter sent to Red Cross employees suggesting that employees might lose their jobs if they commenced or stayed on strike violating the Act - Red Cross applying for judicial review on ground that subject matter of Board's unfair labour practice finding had been settled by parties and withdrawn - Red Cross seeking stay of Board's decision pending determination of judicial review application - Stay application dismissed

THE CANADIAN RED CROSS SOCIETY (ONTARIO DIVISION); RE ONTARIO LABOUR RELATIONS BOARD AND THE SERVICE EMPLOYEES INTERNATIONAL UNION, LOCALS 204 AND 532 ..... (Oct.)

1466

Strike Replacement Workers - Employer - Interference in Trade Unions - Intimidation and Coercion - Strike - Unfair Labour Practice - "Home Cares" contracting with various "service provider" agencies, including Red Cross, to provide various therapeutic and support services to clients in their homes - Red Cross employees commencing legal strike - Home Cares arranging for other service providers to attend to clients - Union alleging breach of statutory ban on use by employer of strike replacement workers - Board not accepting union's argument that Home Cares actually true "employer" in this case or that Home Cares and service providers "acting on behalf" of Red Cross - Applications under sections 73.1 and 73.2 dismissed - Board finding that letter sent to Red Cross employees suggesting that employees might lose their jobs if they commenced or stayed on strike violating the Act

RED CROSS SOCIETY ONTARIO DIVISION, THE CANADIAN, VICTORIAN ORDER OF NURSES BRANT-HALDIMAND-NORFOLK, COMCARE (CANADA) LIMITED, MED CARE PARTNERSHIP, THE VISITING HOMEMAKERS ASSOCIATION OF HAMILTON-WENTWORTH, HAMILTON-WENTWORTH HOME CARE PROGRAM - VICTORIAN ORDER OF NURSES AND VICTORIAN ORDER OF NURSES RESPITE PROGRAM, THE REGIONAL MUNICIPALITY OF HAMILTON-WENTWORTH, OLSTEN HEALTH CARE SERVICES, MEDICAL PERSONNEL POOL (HAMILTON) LTD., MOHAWK MEDICAL SERVICES, PARA-MED HEALTH SERVICES AND BRANT COUNTY HOME CARE PROGRAM, VETERANS AFFAIRS CANADA; RE S.E.I.U., LOCAL 204 AND LOCAL 532 ..... (Jan.)

34

Strike Replacement Workers - Interference in Trade Unions - Intimidation and Coercion - Lock-Out - Strike - Unfair Labour Practice - Board providing reasons for earlier bottom-line decision in respect of lock-out and violation of section 73.1 of the Act - Wearing of union T-shirts in workplace lawful activity protected by Act - Employer's refusal to allow employees wearing such T-shirts to work amounting to lock-out - Employer violating section 73.1 of the Act by using services of other employees in bargaining unit during lock-out - Board directing employer to cease and desist from using services of employees in bargaining unit so long as lock-out continuing

MISSISSAUGA HYDRO ELECTRIC COMPANY; RE IBEW, LOCAL 636 ..... (Oct.)

1376

Strike Replacement Workers - Interference in Trade Unions - Intimidation and Coercion - Lock-Out - Strike - Unfair Labour Practice - Wearing of union T-shirts in workplace lawful activity protected by Act - Employer's refusal to allow employees wearing such T-shirts to work amounting to lock-out - Employer violating section 73.1 of the Act by using services of other employees in bargaining unit during lock-out - Board directing employer to cease and desist from using services of employees in bargaining unit so long as lock-out continuing

MISSISSAUGA HYDRO ELECTRIC COMPANY; RE IBEW, LOCAL 636 ..... (July)

883

Strike Replacement Workers - Picketing - Strike - Right of Access - Unfair Labour Practice - Board finding that company violated section 73.1 of the Act by using managers from non-

struck stores to perform bargaining unit work at struck locations - Board making declaration and issuing cease and desist order - Employer seeking order restricting picketing at struck locations - Board analyzing provisions of section 11.1 of the *Act* and discussing Board's dual role in protecting statutory right to picket and in limiting exercise of that right in particular circumstances - Board finding evidence insufficient to persuade it that restrictions on picketing appropriate to prevent undue disruption of employer's operations - Application under section 11.1 of the *Act* dismissed

THE GREAT ATLANTIC & PACIFIC COMPANY OF CANADA LIMITED; RE UFCW, LOCALS 175 AND 633, BRIAN DONAGHY, DARRIN FAY, FRANK FORTUNATO, RICK FOX, HELMUT HALLA, ROBERT LIOTTI, DONALD LUPTON, GENE MARTIN, PAM MURDOK, PATRICIA O'DOHERTY, KATHY PAPACONSTANTINO, IRENE PARK AND CLIFF SKINNER .....(Mar.)

303

Strike Replacement Workers - Ratification and Strike Vote - Reconsideration - Settlement - Strike - Unfair Labour Practice - Employer seeking reconsideration of Board decision finding that employer unlawfully using strike replacement workers - Board not permitting employer to renege from its earlier agreement with union that conditions in subsections 73.1(2) and (3) had been met - Reconsideration application dismissed

MARRIOTT MANAGEMENT SERVICES; RE CUPE AND ITS LOCAL 229.....(Aug.)

1018

Strike Replacement Workers - Ratification and Strike Votes - Reconsideration - Strike - Unfair Labour Practice - Union making application in respect of alleged unlawful use replacement workers during strike - Issue arising as to whether section 73.1 of the *Act* applying - Board not satisfied that strike vote conducted by union in accordance with section 74(4) to (6) - Unfair labour practice complaint and reconsideration application dismissed

TOROMONT INDUSTRIES LTD., TOROMONT, A DIVISION OF; RE THE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 112 .....(Aug.)

1149

Strike Replacement Workers - Strike - Employer applying under section 73.2(12) of the *Act* for determination that specified replacement workers necessary to prevent danger to life, health and safety in connection with anticipated strike of its cleaning employees - Company normally employing 28 full-time and two part-time cleaners at work site and having four managerial employees available to perform bargaining unit work in event of strike - Board finding that employer having sufficient managerial personnel to perform cleaning necessary to prevent danger to life, health and safety and that additional assistance in form of specified replacement workers not necessary - Application dismissed

MARRIOTT CORPORATION OF CANADA; RE OPSEU, LOCAL 241; RE MOHAWK COLLEGE OF APPLIED ARTS AND TECHNOLOGY.....(Nov.)

1558

Strike Replacement Workers - Strike - Specified Replacement Workers - Ten stationary engineers employed at brewery's power plant commencing lawful strike - Employer using two managers from struck location, plus a third manager from non-struck location to do the struck work - Union applying for directions under section 73(12) of the *Act* in respect of use of third manager - Power plant requiring presence of stationary engineer 24 hours per day, 7 days per week - Scheduling for power plant normally involving three employees in 24 hour period each working 8 hours, with fourth employee to provide for days off - Employer asserting right to use, in addition to its two managers from the struck location, two specified replacement workers pursuant to section 73.2(3) to enable it to prevent danger to life, health or safety, destruction or serious deterioration of equipment or premises, or serious

environmental damage - Board concluding that employer not satisfying its onus under section 73.2(15) and therefore not entitled to use specified replacement workers

LABATT'S ONTARIO BREWERIES, DIVISION OF LABATT BREWING COMPANY LIMITED; RE IUOE, LOCAL 772; RE BREWERY GENERAL AND PROFESSIONAL WORKERS' UNION..... (June)

704

Strike Replacement Workers - Strike - Unfair Labour Practice - Employer asserting right to have struck work performed by persons engaged, hired or transferred into pre-existing managerial positions after date of notice to bargain, so long as there is no net increase in size of employer's managerial complement - Board not accepting employer's assertion - Employer's use of various persons to perform struck found to violate *Act* - Complaint allowed - Cease and desist order issuing

MARRIOTT MANAGEMENT SERVICES; RE CUPE AND ITS LOCAL 229..... (June)

729

Strike Replacement Workers - Strike - Unfair Labour Practice - Employer submitting that preconditions for application of section 73.1 of the *Act* not met because of various aspects surrounding strike vote, including length of time between vote and calling the strike, wording of ballot and other matters - Board deciding that preconditions satisfied - Board ruling that manager who had been promoted from bargaining unit after giving of notice to bargain precluded from doing struck work - Board finding that driving not work ordinarily performed by anyone and that performance of such work during the strike not violating the *Act* - Board ruling that use of non-bargaining unit 'occasional' workers to do struck work violating the *Act* - Employer directed to cease and desist from using replacement workers in breach of section 73.1 of the *Act*

CANADA STAMPING AND DIES LIMITED; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 636.....(Mar.)

213

Strike Replacement Workers - Strike - Unfair Labour Practice - Subsequent to commencement of strike by projectionists, manager at struck movie theatre assigned to theatre in Montreal where she worked several hundred hours as projectionist in order to complete apprenticeship - Manager then returning to struck location and doing work of striking projectionists - Board finding that assignment to struck location amounting to "transfer" within meaning of the *Act* - Employer violating *Act* by transferring manager to struck location after date of notice to bargain - Employer directed to stop using manager to do bargaining unit work

FAMOUS PLAYERS INC.; RE IATSE, LOCAL 357..... (Feb.)

131

Strike Replacement Workers - Strike - Union complaining about building owner's management staff doing clean-up work during strike of cleaning contractor's employees - Board concluding that building owner acting on its own behalf, not "acting on behalf of" cleaning contractor employer - Union also alleging that introduction of new machinery after commencement of strike violating *Act* - Application alleging violation of section 73.1 of the *Act* dismissed

MODERN BUILDING CLEANING INC., CENTENNIAL CENTRE OF SCIENCE AND TECHNOLOGY (THE "ONTARIO SCIENCE CENTRE") AND THE INDIVIDUALS LISTED AT SCHEDULE "A"; RE OPSEU..... (Oct.)

1390

Termination - Bargaining Unit - Union representing employees in separate full-time and part-time bargaining units - In previous round of bargaining, employer and union agreeing to combine the two units together with a third bargaining unit in another municipality upon expiry of collective agreement - Group of employees making timely termination application in respect of full-time and part-time units - Board rejecting union's submission that employ-



ees required to demonstrate appropriate level of support in combined bargaining unit - Board directing representation votes in full-time and part-time bargaining units

RETAIL, WHOLESALE CANADA, CANADIAN SERVICE SECTOR, DIVISION OF THE USWA, LOCALS 414, 422, 440, 448, 461, 483, 488, 1000, 1688; RE PRIMROSE G. SHORT..... (July)

891

Termination - Certification - *Crown Employees Collective Bargaining Act* - Rival union seeking to terminate incumbent union's bargaining rights for certain "enforcement officers" employed by Crown agency covered by *Crown Employees Collective Bargaining Act, 1993* (Bill 117) and/or applying to be certified to represent those employees - Parties disputing effect of transition provisions in Bill 117 - Board concluding that Labour Relations Board (and not Ontario Public Service Labour Relations Tribunal) having jurisdiction to determine the applications and that provisions of "old" *Crown Employees Collective Bargaining Act* applying to the applications

TORONTO AREA TRANSIT OPERATING AUTHORITY; RE ASSOCIATION OF GO TRANSIT ENFORCEMENT OFFICERS; RE AMALGAMATED TRANSIT UNION, LOCAL 1587 ..... (July)

943

Termination - Certification - Evidence - Petition - Practice and Procedure - Board ruling that employee who had been discharged contrary to the Act, prior to application to terminate union's bargaining rights, should be included on list of employees for purposes of the count - Board not giving any weight to petition sent to Board by fax - Applicant conceding that re-affirmation evidence filed by union representing voluntary expression of employee wishes - Application dismissed

MEAFORD BEAVER VALLEY COMMUNITY SUPPORT SERVICES; RE SONYA TER STEGE; RE OPSEU ..... (Oct.)

1376

Termination - Collective Agreement - Timeliness - Union alleging that termination application untimely because collective agreement in effect - Employer submitting that no collective agreement in effect and that, as result of union striking, offer it had made no longer outstanding for union to accept - Board determining that collective agreement in effect and that application untimely - Application to terminate bargaining rights dismissed

SHOPPERS DRUG MART, KATALIN LANCZI PHARMACY LTD. C.O.B. AS; RE PAMELA BLAIS; RE RWDSU, CANADIAN SERVICE SECTOR DIVISION OF THE USWA, LOCALS 414, 422, 440, 448, 461, 483, 488, 1000 AND 1688..... (Oct.)

1419

Termination - Evidence - Petition - Practice and Procedure - Applicant not providing Board with detailed evidence of origination of petition, nor any evidence with respect to circulation of petition or continuity of carriage of petition after it was received by employee collecting signatures and then to the Board, nor any evidence of circumstances in which each and every signature collected - Union's non-suit motion granted - Application to terminate bargaining rights dismissed

MAPLE LODGE FARMS LTD.; RE GARAGE WORKERS MAPLE LODGE FARMS LTD.; RE UFCW, LOCAL 175 ..... (Oct.)

1371

Termination - Petition - Board finding that signatures on reaffirmations signifying voluntary expression of those employees in support of union - Less than forty-five per cent of employees, as of terminal date, applying for termination of bargaining rights - Application dismissed

WENDY'S RESTAURANTS OF CANADA INC.; RE REBECCA MILLAR AND STACY FENN; RE RETAIL WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF UNITED STEELWORKERS OF AMERICA, LOCAL 448... (Dec.)

1708

Termination - Petition - Reconsideration - Board not accepting that petitions filed representing

voluntary expression of wishes of employees - Termination application dismissed - Reconsideration application dismissed

MAPLE LODGE FARMS; RE MECHANICS IN GARAGE MAPLE LODGE FARM;  
RE UFCW, LOCAL 175..... (Apr.)

447

Timeliness - Certification - Charges - Evidence - Fraud - Intimidation and Coercion - Membership Evidence - Petition - Practice and Procedure - Union's certification application sent by registered mail on August 11 and employees' petition received by private courier at Board's office on August 12 - Rules of Procedure providing that date of filing is date document received by Board or, if mailed by registered mail, date on which it is mailed as verified by Post Office - Combined operation of section 8(4) of the Act and Board's Rules making petition untimely - Board dismissing objecting employees' allegations concerning union's collection of membership evidence for failure to make out *prima facie* case - Board declining objecting employees' request that Board exercise its discretion under section 8(3) of the Act to order representation - Certificate issuing

LUTHERAN NURSING HOME (OWEN SOUND); RE CLC; RE ROSANNE GILLARD AND SANDRA MARSHALL ..... (Oct.)

1362

Timeliness - Certification - Collective Agreement - Pre-Hearing Vote - Trade Union Status - Staff Association wishing to displace CUPE as bargaining agent for employees of Board of Education - Staff Association found to be trade union within meaning of *Labour Relations Act* - Board concluding that extension of collective agreement to March 31, 1996 pursuant to section 35 of *Social Contract Act* making staff association's certification application untimely

OTTAWA BOARD OF EDUCATION; RE CUPE AND ITS LOCAL 1400; RE EDUCATION SUPPORT STAFF ASSOCIATION..... (Aug.)

1024

Timeliness - Certification - Pre-Hearing Vote - Certification application made by raiding union timely when filed - Incumbent union submitting that notice given by it under section 35 of the *Social Contract Act* having effect of closing open period retroactively - Board finding no basis for interpretation offered by incumbent union - Board directing that ballots cast in representation vote be counted

THE CORPORATION OF THE CITY OF SCARBOROUGH; CUPE; RE ONA.. (Mar.)

300

Timeliness - Collective Agreement - Termination - Union alleging that termination application untimely because collective agreement in effect - Employer submitting that no collective agreement in effect and that, as result of union striking, offer it had made no longer outstanding for union to accept - Board determining that collective agreement in effect and that application untimely - Application to terminate bargaining rights dismissed

SHOPPERS DRUG MART, KATALIN LANCZI PHARMACY LTD. C.O.B. AS; RE PAMELA BLAIS; RE RWDSU, CANADIAN SERVICE SECTOR DIVISION OF THE USWA, LOCALS 414, 422, 440, 448, 461, 483, 488, 1000 AND 1688..... (Oct.)

1419

Timeliness - Construction Industry - Construction Industry Grievance - Discharge - Practice and Procedure - Unfair Labour Practice - Board declining to dismiss grievances as untimely - Board declining to defer hearing of grievances until unfair labour practice complaint heard or until appeal to international union resolved

DIXIE ELEVATOR LTD.; RE IUEC, LOCAL 50 ..... (May)

539

Trade Union - Certification - Board dismissing earlier certification application on ground that employer's employees not eligible for membership under applicant's constitution - Union

making subsequent application - Board finding that amendments to applicant's constitution effective to cure defect regarding restriction on membership

THE MUNICIPALITY OF METROPOLITAN TORONTO; RE ONTARIO LIQUOR  
BOARDS EMPLOYEES' UNION; RE METROPOLITAN TORONTO CIVIC  
EMPLOYEES' UNION, LOCAL 43, CUPE, LOCAL 79.....(Nov.) 1594

Trade Union - Certification - Employer Support - Trade Union Status - Unfair Labour Practice -  
Board declining to bar certification application by employees' association under section 105  
of the Act following unsuccessful application to terminate union's bargaining rights -  
Employees' association found to be a trade union under the Act where applications for  
membership not completed until several weeks after other steps in forming union - Board  
not persuaded that employer participated in formation or administration of association -  
Board directing that ballots cast in pre-hearing representation vote be counted

EUCLID-HITACHI HEAVY EQUIPMENT LTD.; RE EUCLID-HITACHI EMPLOY-  
EES ASSOCIATION; RE CAW-CANADA AND ITS LOCAL 1917.....(Nov.) 1514

Trade Union - Certification - Liquor Boards Employee's Union applying for certification in  
respect of certain municipal employees - Union's constitution restricting membership to  
employees of the Crown, its agencies or any private employer - Board concluding that  
municipal employees not eligible for membership under applicant union's constitution -  
Union not having established practice of admitting persons to membership without regard  
to constitution's eligibility requirements - Application dismissed

THE MUNICIPALITY OF METROPOLITAN TORONTO, METROPOLITAN  
TORONTO CIVIC EMPLOYEES' UNION, LOCAL 43, AND CANADIAN UNION  
OF PUBLIC EMPLOYEES, LOCAL 79; RE ONTARIO LIQUOR BOARDS  
EMPLOYEES' UNION .....(July) 938

Trade Union - Construction Industry - Construction Industry Grievance - Labourers' union alleg-  
ing that MTABA breaching subcontracting provision of collective agreement - Subcontract-  
ing provision effective only if Labourers' Local 183 and Bricklayers' Local 1 form "common  
union" by specified date - Board satisfied that "common union" not formed - Grievance  
dismissed

METROPOLITAN TORONTO APARTMENT BUILDERS' ASSOCIATION; RE  
LIUNA, LOCAL 183.....(Nov.) 1568

Trade Union - Discharge - Discharge for Union Activity - Interim Relief - Remedies - Trade  
Union Status - Employees discharged after signing letter setting out dissatisfaction with  
working conditions and asking employer to recognize them in representative capacity -  
Employees filing unfair labour practice complaint and seeking interim reinstatement -  
Employer asking Board to dismiss interim relief application and unfair labour practice com-  
plaint on ground that employees not engaged in trade union activity - Board satisfied that  
arguable case made out that employees attempting to establish association that might have  
acquired characteristics of "trade union" under the *Act* and that terminations motivated, at  
least in part, by their participation in effort to negotiate collectively with their employer -  
Balance of harm favouring granting relief - Interim reinstatement ordered

MINIWORLD MANAGEMENT, OPERATING AS NORTH YORK INFANT NUR-  
SERY AND PRESCHOOL; RE MADELENE ALAGANO, CATALINA ALVAREZ,  
ELIZABETH ARAUJO, ELEN BUCKLEY, SUZANNA CABRAL AND SUSAN  
CHISLETT .....(Apr.) 455

Trade Union - Trade Union Status - Intervenor union submitting that applicant union should be  
denied "status" because of irregularities related to ratification of constitution and requisite  
quorum at organizational meeting - Board satisfied that actions taken at organizational  
meeting sufficient to create organization, admit members, and to approve constitution -



Board paying particular attention to manifest intention of participants, which was to create trade union for purpose of certification application - Board finding applicant to be "trade union" within meaning of the *Act*

CATERAIR CHATEAU CANADA LIMITED; RE CANADIAN FOOD AND ALLIED WORKERS' UNION; RE HERE, LOCAL 75.....(Apr.)

365

Trade Union - Trade Union Status - Union Successor Status - OSSTF applying for declaration that it is successor union to Association of Schedule II Employees - Board concluding that fact that Association's constitution permits admission of non-employees and that it in fact does so would not in itself prevent Association from being considered a trade union within meaning of the *Act* - Parties directed to meet for pre-hearing conference

THE BOARD OF EDUCATION FOR THE CITY OF TORONTO; RE THE OSSTF.....(Aug.)

1098

Trade Union Status - Certification - Collective Agreement - Pre-Hearing Vote - Timeliness - Staff Association wishing to displace CUPE as bargaining agent for employees of Board of Education - Staff Association found to be trade union within meaning of *Labour Relations Act* - Board concluding that extension of collective agreement to March 31, 1996 pursuant to section 35 of *Social Contract Act* making staff association's certification application untimely

OTTAWA BOARD OF EDUCATION; RE CUPE AND ITS LOCAL 1400; RE EDUCATION SUPPORT STAFF ASSOCIATION.....(Aug.)

1024

Trade Union Status - Certification - Employer Support - Trade Union - Unfair Labour Practice - Board declining to bar certification application by employees' association under section 105 of the *Act* following unsuccessful application to terminate union's bargaining rights - Employees' association found to be a trade union under the *Act* where applications for membership not completed until several weeks after other steps in forming union - Board not persuaded that employer participated in formation or administration of association - Board directing that ballots cast in pre-hearing representation vote be counted

EUCLID-HITACHI HEAVY EQUIPMENT LTD.; RE EUCLID-HITACHI EMPLOYEES ASSOCIATION; RE CAW-CANADA AND ITS LOCAL 1917.....(Nov.)

1514

Trade Union Status - Discharge - Discharge for Union Activity - Interim Relief - Remedies - Trade Union - Employees discharged after signing letter setting out dissatisfaction with working conditions and asking employer to recognize them in representative capacity - Employees filing unfair labour practice complaint and seeking interim reinstatement - Employer asking Board to dismiss interim relief application and unfair labour practice complaint on ground that employees not engaged in trade union activity - Board satisfied that arguable case made out that employees attempting to establish association that might have acquired characteristics of "trade union" under the *Act* and that terminations motivated, at least in part, by their participation in effort to negotiate collectively with their employer - Balance of harm favouring granting relief - Interim reinstatement ordered

MINIWORLD MANAGEMENT, OPERATING AS NORTH YORK INFANT NURSERY AND PRESCHOOL; RE MADELENE ALAGANO, CATALINA ALVAREZ, ELIZABETH ARAUJO, ELEN BUCKLEY, SUZANNA CABRAL AND SUSAN CHISLETT.....(Apr.)

455

Trade Union Status - Trade Union - Intervenor union submitting that applicant union should be denied "status" because of irregularities related to ratification of constitution and requisite quorum at organizational meeting - Board satisfied that actions taken at organizational meeting sufficient to create organization, admit members, and to approve constitution - Board paying particular attention to manifest intention of participants, which was to create

trade union for purpose of certification application - Board finding applicant to be "trade union" within meaning of the *Act*

CATERAIR CHATEAU CANADA LIMITED; RE CANADIAN FOOD AND ALLIED WORKERS' UNION; RE HERE, LOCAL 75.....(Apr.) 365

Trade Union Status - Trade Union - Union Successor Status - OSSTF applying for declaration that it is successor union to Association of Schedule II Employees - Board concluding that fact that Association's constitution permits admission of non-employees and that it in fact does so would not in itself prevent Association from being considered a trade union within meaning of the *Act* - Parties directed to meet for pre-hearing conference

THE BOARD OF EDUCATION FOR THE CITY OF TORONTO; RE THE OSSTF .....(Aug.) 1098

Trusteeship - Interference in Trade Unions - Interim Relief - Intimidation and Coercion - Remedies - Unfair Labour Practice - Union Successor Status - Local 75 of Hotel employees' union purporting to disaffiliate from union - Local placed under trusteeship - Local 75 filing unfair labour practice complaint against union and named employer in connection with employer's decision to retain dues in escrow - Local 75 seeking interim order directing employer to remit dues to it - In response to Local 75's application, union filing its own unfair labour practice complaint, its own successor rights application under section 63 of the *Act*, and its own interim relief application - Board not persuaded that any interim order warranted at this stage - Application for interim relief dismissed

WESTBURY HOWARD JOHNSON HOTEL ["THE WESTBURY"], AND H.E.R.E. ["THE PARENT UNION"]; RE H.E.R.E., LOCAL 75 ["LOCAL 75"] .....(Aug.) 1166

Unfair Labour Practice - Adjustment Plan - Duty to Bargain in Good Faith - Practice and Procedure - Union alleging that employer breaching duty to bargain in good faith and make every reasonable effort to negotiate adjustment plan - Subsequent to hearing of complaint, and while decision pending, Board informed by employer that parties had reached collective agreement including terms on certain adjustment issues and that application rendered moot - Union disputing employer's position - Board dismissing application on grounds on mootness, and on grounds that it would serve no labour relations purpose to inquire further into application because no remedial relief would be ordered

ONTARIO HYDRO; RE POWER WORKERS UNION, CUPE LOCAL 1000 ..... (June) 765

Unfair Labour Practice - Certification - Certification Where Act Contravened - Change in Working Conditions - Discharge - Discharge for Union Activity - Interference in Trade Unions - Board finding that company did not violate *Act* in discharging union supporter or three managers, and that a number of other allegations not established - Employer violating *Act* in telling employee that he could not solicit for union on company property, promising to clear discipline records, removing last names from work schedules and time cards and offering Christmas bonus to employees as inducement to avoid dealing with union and thus interfering with union's organizing drive - Board inviting submissions on whether it ought to determine application under "old" section 8 of the *Act* before hearing adjourned unfair labour practice complaint - Board remaining seized as to all remedial matters

PRICE CLUB WESTMINSTER; PRICE CLUB ST. LAURENT INC. C.O.B. AS; RE UFCW, LOCAL 175 .....(Aug.) 1029

Unfair Labour Practice - Certification - Certification Where Act Contravened - Construction Industry - Discharge - Discharge for Union Activity - Interference in Trade Unions - Intimidation and Coercion - Remedies - Employer violating *Act* in threatening and intimidating one employee with respect to union membership and in laying off second employee because of his union activity - Reinstatement with compensation ordered - Board determining that

as result of employer's violations true wishes of employees unlikely to be ascertained - Union certified under section 9.2 of the Act

BASILE INTERIORS LTD.; RE PAT, LOCAL 1494 .....(Aug.) 963

Unfair Labour Practice - Certification - Certification Where Act Contravened - Interference with Trade Unions - Intimidation and Coercion - Remedies - Employer found to have violated Act by certain statements contained in bulletins distributed to employees, certain statements made by employer at meeting with employees, and by certain statements made to two employees about soliciting support for the union - Board directing employer to post and distribute Board notice to employees, to permit union access to plant during working hours for purpose of convening meeting with employees out of presence of members of management, and to rescind written warnings given to two employees - Board declining to certify union under section 9.2 of the Act - Representation vote directed

CANAC KITCHENS LIMITED; RE CJA .....(Aug.) 972

Unfair Labour Practice - Certification - Change in Working Conditions - Natural Justice - Practice and Procedure - Sale of a Business - Union alleging that employer violating statutory freeze - Employer acknowledging its status as "successor employer" by virtue of section 64.2 of the Act, but arguing that Board ought to dismiss complaint due to union's 3 1/2 month delay in bringing complaint - Employer also submitting that statutory freeze not applying to it because it never received notice of union's certification application - Board declining to dismiss for delay and finding that statutory freeze applying to successor employer under section 64(3) of the Act - Employer's preliminary motions dismissed

GROUP 4 C.P.S. LIMITED; RE USWA .....(Apr.) 400

Unfair Labour Practice - Certification - Charges - Intimidation and Coercion - Fraud - Membership Evidence - Reconsideration - Following union's certification, certain employees making unfair labour practice application complaining about manner in which fellow employee collected membership evidence - Employer also seeking reconsideration of certification decision - Board hearing evidence of nine persons and resolving conflicting evidence in favour of union's witness - Board finding that employee collector did not contravene Act when he approached employees to obtain membership evidence - Employee collector's actions not causing Board to conclude that filed membership evidence unreliable - Applications dismissed

MADAWASKA HARDWOOD FLOORING INC.; RE IWA - CANADA .....(Mar.) 267

Unfair Labour Practice - Certification - Employer Support - Trade Union - Trade Union Status - Board declining to bar certification application by employees' association under section 105 of the Act following unsuccessful application to terminate union's bargaining rights - Employees' association found to be a trade union under the Act where applications for membership not completed until several weeks after other steps in forming union - Board not persuaded that employer participated in formation or administration of association - Board directing that ballots cast in pre-hearing representation vote be counted

EUCLID-HITACHI HEAVY EQUIPMENT LTD.; RE EUCLID-HITACHI EMPLOYEES ASSOCIATION; RE CAW-CANADA AND ITS LOCAL 1917 .....(Nov.) 1514

Unfair Labour Practice - Change in Working Condition - *Hospital Labour Disputes Arbitration Act* - ONA alleging that hospital employer violating statutory freeze by granting non-bargaining unit staff one extra week of vacation entitlement and refusing to extend that benefit to ONA bargaining unit members still without first collective agreement - Board applying "reasonable expectations" test - Application allowed - Employer directed to grant bargaining unit employees same compensation package granted to non-bargaining unit employees

THE BOARD OF GOVERNORS OF THE BELLEVILLE GENERAL HOSPITAL; RE ONA .....(July) 904



- Unfair Labour Practice - Change in Working Conditions - Discharge - Discharge for Union Activity - *Hospital Labour Disputes Arbitration Act*- Interim Relief - Remedies - Settlement - Union certified three years earlier and still without first collective agreement - Union making unfair labour practice complaint in respect of work reorganization ("alternative placement") and lay-offs affecting one-half of the bargaining unit - Union alleging that employer's conduct motivated by anti-union *animus*, breaching statutory freeze and violating minutes of settlement of earlier complaint - Union seeking interim order preserving *status quo* pending disposition of unfair labour practice complaint or until interest arbitration award issued - Employer implementing impugned changes after notice of union's interim relief application, but before Board hearing - Board concluding that balance of harm weighing in favour making interim order - Employer directed to restore and maintain *status quo* with respect to bargaining unit jobs pending disposition of union's complaint
- THE MISSISSAUGA HOSPITAL; RE THE PRACTICAL NURSES FEDERATION OF ONTARIO ..... (July) 934
- Unfair Labour Practice - Change in Working Conditions - Employee - Ratification and Strike Vote - Strike - Strike Replacement Workers - Union's compliance with section 74(5) of Act arising in context of strike replacement application - Whether laid off employee with only possibility of recall entitled to participate in strike vote - Parties agreeing that individual entitled to vote only if found to be employee in bargaining unit - Board finding individual without sufficiently substantial employment attachment to be considered employee within bargaining unit with entitlement to vote - Board finding that employer carrying on business as before in hiring students who had worked for it for the last 4 summers and not recalling individual from lay-off who had worked for it for three weeks almost one year earlier - Applications alleging violation of statutory freeze and violation of strike replacement ban dismissed
- GOULARD LUMBER (1971) LIMITED, MARK GOULARD AND ROMEO GOULARD RE IWA-CANADA, LOCAL 1-2693 AND LEO LAFLEUR ..... (Oct.) 1334
- Unfair Labour Practice - Change in Working Conditions - *Hospital Labour Disputes Arbitration Act* - Interference in Trade Unions - Board dismissing union's complaint alleging that hospital employer violating Act by instituting new benefits plan for non-unionized employees and raising long term disability premium for union's members
- THE HOSPITAL FOR SICK CHILDREN; RE CUPE, LOCAL 2816 ..... (Sept.) 1255
- Unfair Labour Practice - Change in Working Conditions - Interference in Trade Unions - Interim Relief - Remedies - New schedule alleged by union to violate statutory freeze and to be motivated by anti-union considerations - Union filing unfair labour practice complaint and seeking interim relief - Balance of harm weighing in favour of union - Employer directed to revoke new scheduling system and to reinstate prior system on interim basis pending disposition of union's unfair labour practice complaint
- VISTAMERE RETIREMENT RESIDENCE, 678114 ONTARIO INC. C.O.B. AS; RE PRACTICAL NURSES FEDERATION OF ONTARIO ..... (Sept.) 1274
- Unfair Labour Practice - Change in Working Conditions - Interference in Trade Unions - Intimidation and Coercion - Board finding that installation of video surveillance cameras in workplace motivated, at least in part, by anti-union *animus* - Installation of cameras also violating statutory freeze - Union's complaint allowed and employer directed to remove cameras forthwith
- ROYALGUARD VINYL CO., A DIVISION OF ROYPLAST LIMITED; RE USWA ..... (Jan.) 59
- Unfair Labour Practice - Change in Working Conditions - Interim Relief - Related Employer - Remedies - Board making interim order directing employer to rescind or suspend operation

- of new arrangements affecting employees pending determination of union's complaint or expiration of "freeze", whichever first occurs
- CHECKER LIMOUSINE AND AIRPORT SERVICE, G. HANLON HOLDINGS INC., G.J. HANLON ("HANLON") AND J. ORENDORFF, 947465 ONTARIO LTD., C.O.B. AS; RE RETAIL WHOLESALE CANADA, CANADIAN SERVICE SECTOR DIVISION OF THE UNITED STEELWORKERS OF AMERICA, LOCALS 414, 422, 440, 448, 461, 483, 488, 1000 AND 1688 .....(Aug.) 991
- Unfair Labour Practice - Change in Working Conditions - Interim Relief - Remedies - Board directing employer to defer implementation of announced shift/schedule changes pending determination of union's unfair labour practice complaint
- MULTIPAK LTD.; RE TORONTO TYPOGRAPHICAL UNION NO. 91-0 ..... (July) 884
- Unfair Labour Practice - Change in Working Conditions - Interim Relief - Remedies - Board directing employer to maintain present scheduling system on interim basis pending disposition of union's unfair labour practice application
- VISTAMERE RETIREMENT RESIDENCE, 678114 ONTARIO INC. C.O.B. AS; RE PRACTICAL NURSES FEDERATION OF ONTARIO .....(Nov.) 1602
- Unfair Labour Practice - Change in Working Conditions - Interim Relief - Remedies - Union alleging that change in benefit plan and change in method of wage payment to particular classification improperly motivated and violating statutory freeze - Union's application for interim relief dismissed on grounds of delay
- THE BRICK WAREHOUSE CORPORATION; RE SEU LOCAL 268, AFFILIATED WITH THE S.E.I.U., A.F. OF L., C.I.O. AND C.L.C. ....(Aug.) 1116
- Unfair Labour Practice - Change in Working in Conditions - Discharge - Discharge for Union Activity - Interim Relief - Remedies - Union filing unfair labour practice complaint in respect of employee's discharge and in respect of work reorganization and second employee's demotion alleged to violate statutory freeze - Union seeking interim relief pending determination of complaint - Board declining to order reinstatement of discharged employee but directing employer to continue or restore second employee's terms and conditions of employment on interim basis
- OMBUDSMAN ONTARIO; RE OPEIU, LOCAL 343 ..... (July) 885
- Unfair Labour Practice - Charter of Rights and Freedoms - Constitutional Law - Duty of Fair Representation - School Boards and Teachers Collective Negotiations Act - Board rejecting submission that section 2(1)(f) of the *Labour Relations Act* violating section 7 of the Charter by depriving teachers of the right to bring complaints of unfair representation against their bargaining agent - Board without jurisdiction to deal with application - Application dismissed
- GRANT TADMAN; RE ONTARIO ENGLISH CATHOLIC TEACHERS' ASSOCIATION TORONTO SECONDARY UNIT; RE METROPOLITAN SEPARATE SCHOOL BOARD .....(Aug.) 1096
- Unfair Labour Practice - Consent to Prosecute - Interim Relief - Remedies - Union filing complaint and seeking consent to prosecute in respect of alleged violation of earlier Board order directing that key union supporter be reinstated to office duties - Union seeking interim order reinstating employee - Board noting considerable labour relations harm of leaving Board order in state of non-compliance - Board directing that employee be reinstated and that employer post Board notice in workplace
- BANNERMAN ENTERPRISES INC.; RE USWA ..... (Sept.) 1179
- Unfair Labour Practice - Constitutional Law - Intimidation and Coercion - Hydro employee alleg-

ing various acts of intimidation by employer related to exercise of rights under the *Act* - Employer alleging that Board without jurisdiction on ground that applicant's employment relationship with Hydro governed by *Canada Labour Code* - Applicant involved in inspecting nuclear facilities - Board concluding that inspections carried on by applicant 'integral', 'vital' or 'essential' in relation to production of nuclear energy - Board concluding that applicant's employment relationship governed by federal legislation - Application dismissed

ONTARIO HYDRO; RE EUGENE KALWA; RE THE SOCIETY OF ONTARIO HYDRO PROFESSIONAL AND ADMINISTRATIVE EMPLOYEES ..... (Mar.) 277

Unfair Labour Practice - Construction Industry - Construction Industry Grievance - Discharge - Timeliness - Practice and Procedure - Board declining to dismiss grievances as untimely - Board declining to defer hearing of grievances until unfair labour practice complaint heard or until appeal to international union resolved

DIXIE ELEVATOR LTD.; RE IUEC, LOCAL 50 ..... (May) 539

Unfair Labour Practice - Construction Industry - Discharge - Discharge for Union Activity - Board finding lay-offs of five fitters related to union's certification application and therefore improper - Application allowed

EASTERN POWER DEVELOPERS CORP.; RE UA, LOCAL UNION 46 ..... (Dec.) 1651

Unfair Labour Practice - Construction Industry - Discharge - Discharge for Union Activity - Practice and Procedure - Board finding union's 8 1/2 month delay in bringing application undue and without justification - Application dismissed

EASTERN WELDING, 655270 ONTARIO INC. C.O.B. AS; RE UA, LOCAL UNION 819 ..... (June) 673

Unfair Labour Practice - Construction Industry - Discharge - Duty of Fair Referral - Duty of Fair Representation - Intimidation and Coercion - Practice and Procedure - Board dismissing objection to vice-chair sitting alone in this case - Applicant complaining of threats related to his participation in Board proceeding, union charges laid against the applicant, the refusal to permit the applicant to lay union charges against a fellow member, the failure to refer the applicant to work on certain project, the union's failure to assist him with certain grievances, his discharge, and being struck from the hiring hall referral list because of his improper expulsion from the union - Responding parties asking Board to dismiss application on grounds of undue delay - Board considering effect of delay in construction industry - Board dismissing all aspects of complaint for delay, except for allegation concerning removal of applicant from hiring hall list - Nine month delay in respect of referral issue not so long as to cause Board to decline to hear complaint

ROBERT DUMEAH; RE BSOIW LOCAL 700, K.E.W. STEEL FABRICATORS LTD. .... (June) 655

Unfair Labour Practice - Construction Industry - Duty of Fair Representation - Duty of Fair Referral - Applicant alleging that union caused him to lose job by grieving against his employer and disrupting the work site with overly frequent visits by business representatives in furtherance of campaign against him - Complaint dismissed

JOSE MARTINS; RE LIUNA, LOCAL 527 ..... (May) 560

Unfair Labour Practice - Construction Industry - Related Employer - Construction company violating Act by incorporating new company in order to enter into agreement with Labourers' union with respect to employees who, absent the incorporation, would have been represented by Bricklayers' union - Bricklayers seeking related employer declaration in respect of a number of construction contractors - Board issuing declaration in respect of three of the companies, but not in respect of fourth company - Board exercising its discretion



against making declaration where its effect would be tantamount to a revocation of Labourers' certificate with respect to fourth company

BAYRITZ CONSTRUCTION LTD. AND BAYRITZ MASONRY LTD. AND DAKOTA MASONRY LTD. AND 986153 ONTARIO LTD. C.O.B. AS YELLOW BRICK MASONRY AND SUNDIAL BRICKLAYERS INC.; RE BAC; RE LIUNA, LOCAL 183 ..... (Oct.)

1283

Unfair Labour Practice - Continuation of Benefits - Practice and Procedure - Reconsideration - Strike - Board determining that under section 81.1 of the *Act*, union entitled to tender payments for selected benefits - Employer directed to provide union with information respecting amounts necessary to continue benefits selected by union - Employer applying for reconsideration on ground that Board without jurisdiction to make its production order and on ground that Board was required to first determine whether union had tendered any payment before making any order or direction - Reconsideration application dismissed

PARTEK INSULATIONS LTD.; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 456..... (Feb.)

167

Unfair Labour Practice - Crown Employees Collective Bargaining Act - Change in Working Conditions - Interim Relief - Remedies - Union alleging that employers violating statutory freeze by altering employees' pension plan and seeking interim relief pending disposition of complaint - Employers submitting that Board should not grant interim relief which is tantamount to final disposition of main complaint - Board not agreeing that interim relief never appropriate in such circumstances - Board satisfied that balance of harm favouring union and that interim relief should be granted - Board directing employers to provide bargaining unit employees with pension plan equivalent to Public Service Pension Plan pending disposition of unfair labour practice complaint

BEEF IMPROVEMENT ONTARIO INCORPORATED, THE CROWN IN RIGHT OF ONTARIO (AS REPRESENTED BY THE ONTARIO MINISTRY OF AGRICULTURE AND FOOD) AND ONTARIO SWINE IMPROVEMENT ONTARIO INCORPORATED AND; RE OPSEU; RE GROUP OF EMPLOYEES..... (Apr.)

341

Unfair Labour Practice - Discharge - Discharge for Union Activity - Discharged employees reinstated by different Board panel on interim basis pending determination of unfair labour practice complaint - At hearing on merits of unfair labour practice complaint, union also complaining about manner of interim reinstatement - Board finding employer in violation of the *Act* in respect of interim reinstatement by reinstating grievors to night shift and to job mix that was not reflective of range of duties normally performed - In respect of main complaint, Board finding employees' discharges tainted by anti-union *animus* and directing permanent reinstatement with compensation

TATE ANDALE CANADA INC.; RE USWA..... (June)

781

Unfair Labour Practice - Discharge - Discharge for Union Activity - Interim Relief - Practice and Procedure - Remedies - Board discussing importance of filing full and complete declarations in applications for interim relief - Board directing that two of three discharged employees be reinstated pending determination of unfair labour practice complaint - Board determining that balance of harm weighing in employer's favour in respect of third discharged employee

SHIRLON PLASTICS INC.; RE UFCW, AFL/CIO, CLC ..... (Aug.)

1086

Unfair Labour Practice - Discharge - Discharge for Union Activity - Interim Relief - Remedies - Board directing employer to provide work to its employees equivalent to number of hours

provided when operating two full shifts until Board determining if lay-off of 23 employees legitimate

EARNWAY INDUSTRIES (CANADA) LTD.; RE IWA CANADA .....(Nov.) 1511

Unfair Labour Practice - Discharge - Discharge for Union Activity - Interim Relief - Remedies - Board directing interim reinstatement of employee discharged during union organizing campaign

COOPER INDUSTRIES (CANADA) INC.; RE USWA .....(Mar.) 225

Unfair Labour Practice - Discharge - Discharge for Union Activity - Interim Relief - Remedies - Union filing complaint in respect of discharge of inside organizer and seeking interim reinstatement - Board not regarding three week delay in bringing application as substantial - Balance of harm weighing in union's favour - Board directing that employee be reinstated pending determination of complaint and that Board notice be posted in workplace

INTERCON SECURITY LIMITED; RE COMMUNICATION, ENERGY AND PAPERWORKERS UNION OF CANADA..... (Sept.) 1228

Unfair Labour Practice - Discharge - Discharge for Union Activity - Practice and Procedure - Union filing unfair labour practice complaint under section 92.2 of the Act - Employer failing to reply to union's application, but attending at Board on day of hearing - Board not permitting employer additional time to file response - Board determining matter solely on materials filed by applicant - Application allowed and reinstatement with compensation ordered

TRICAN MATERIALS LTD. AND DUNHILL CONTRACTING LTD.; RE TEAMSTERS UNION LOCAL NO. 880 ..... (Dec.) 1703

Unfair Labour Practice - Discharge - Duty of Fair Representation - Employee complaining about union's failure to advance his grievance to arbitration - Board noting that employee's complaint premature and that fact that a grievance does not go to arbitration does not, in itself, establish any arguable breach of the Act - Board exercising its discretion not to inquire into complaint - Complaint dismissed

GEORGE LEE; RE LOCAL 75, UNION REPRESENTATIVE CLEDWYN LONGE .....(Aug.) 1009

Unfair Labour Practice - Discharge - Just Cause - Board finding that some discipline warranted for employee's carelessness, but that other allegations not made out on the evidence - Employer found to have disciplined and discharged employee without just cause contrary to section 81.2 of the Act - Written warning substituted for discharge and for various other disciplinary notations - Reinstatement with compensation ordered - Application allowed

OMBUDSMAN ONTARIO; RE OPEIU, LOCAL 343 ..... (Dec.) 1679

Unfair Labour Practice - Duty of Fair Referral - Intimidation and Coercion - Remedies - Applicant working as owner-operator under agreement between Pipe Line Contractors and Teamsters' union - Board concluding that union's actions in introducing rotation system, referring applicant to Deep River following lay-off from Stittsville loop, handling of applicant's grievance and various other matters not violating union's duty of fair referral - Board finding that union's refusal to allow applicant to pay union dues, renew membership and restore name to dispatch list designed to penalize him for filing complaint with the Board, contrary to section 82(2) of the Act - Union directed to compensate applicant for lost earnings and to restore applicant's name to dispatch list upon his tendering payment of outstanding dues

LOUIS LAUZON; RE TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 91 ..... (June) 717

- Unfair Labour Practice - Duty of Fair Representation - Applicants alleging that union's initial refusal to support their wage grievance, followed by its dilatory scheduling of an arbitration hearing and subsequent cancelling of the hearing, violating union's duty of fair representation - Complaint dismissed
- DANIEL ADUSEI AND FELICIA ADUSEI; RE ONA; RE CLARKE INSTITUTE OF PSYCHIATRY ..... (May) 519
- Unfair Labour Practice - Duty of Fair Representation - Applicants claiming to have been misled by union in relation to early retirement options available to them and seeking \$35,000 each in compensation - Board satisfied that there was no misrepresentation - innocent or otherwise - by union - Complaint dismissed
- RHEAL V. DIONNE, NORTON SMITH, ROBERT TAYLOR, ROBERT HASIE AND JOHN A. MACDONALD, ROBERT BURGON, AND 91 PERSONS LISTED ON APPENDIX "A"; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 199 (ST. CATHARINES) AND ITS LOCAL 1973 (WINDSOR); RE GENERAL MOTORS OF CANADA LIMITED ..... (May) 532
- Unfair Labour Practice - Duty of Fair Representation - Board observing that in order to establish breach of duty of fair representation, complainant must demonstrate something more than fact that grievance did not go to arbitration or that he had some argument to make about how collective agreement might be applied to him - Complainant given 21 days to set out why his application should not be dismissed
- LEONARD A. VAILLANT; RE COMMUNICATIONS ENERGY & PAPERWORKERS' UNION, LOCAL 39; RE LAKEHEAD NEWSPAPER LTD.....(Nov.) 1596
- Unfair Labour Practice - Duty of Fair Representation - Practice and Procedure - Applicant asserting that union's handling of grievance violating the *Act* - Board receiving evidence of the Applicant and then advising parties that it wished to hear their submissions - Board explaining reasons for its intervention and procedural direction - Board concluding that union did not violate the *Act* in respect of any of its actions - Application dismissed
- COVINGTON CLARKE; LOCAL 400 F.W.D. - INTERNATIONAL UNION OF ELECTRONIC, ELECTRICAL, SALARIED, MACHINE AND FURNITURE WORKERS, AFL-CIO/LA-Z-BOY CANADA LIMITED ..... (June) 649
- Unfair Labour Practice - Duty of Fair Representation - Practice and Procedure - Applicants asserting that decision not to take their job posting grievance to arbitration violating union's duty of fair representation - Board declining to inquire into application having regard to delay in filing it, previous parallel proceeding, likelihood of success, nature and utility of any remedy that might flow, cost implications, passage of time from critical events, and shifting labour relations situation - Application dismissed
- MIRZA ALAM, BRIAN AMES, MAHMOOD ANSARI, MOHD ASLAM, BRUCE BOULTON, ROBERT CAMPBELL, ASHTON CASPERSZ, JANA CIBULKA, ED FODEN, ARTHUR GLEGHORN, NIKOLAS ILKOS, JOE KAROL, STEVE KIRILOVIC, ANTHONY KORSMAN, SHU-TAK KWAN, FRED LA ROCHE, MAHENDAR MAKIM, CAROLYN OAKS, RAJ PURI, VINCE RISI, PHIL RUSSELL, DANNY SAMSON, FRANK SINDELAR, HANK TEEUWISSEN, STAN TRAKALO, BILL TYNDALL AND MICHAEL WONG; RE POWER WORKERS' UNION - CUPE LOCAL 1000; RE ONTARIO HYDRO ..... (June) 627
- Unfair Labour Practice - Duty of Fair Representation - Practice and Procedure - Employee alleging violation of union's duty of fair representation based on a refusal to arbitrate his over-time grievance, an allegedly improperly worded grievance regarding sick days, and the failure of the union to consult him regarding a transfer - At the close of employee's case and at



vice-chair's request, employee making argument - Board not satisfied that section 69 of the Act violated and dismissing application

ARTHUR CHEN; RE LOCAL 43 METRO TORONTO CIVIC EMPLOYEES UNION  
CUPE AFFILIATE; RE THE CITY OF TORONTO ..... (Sept.) 1184

Unfair Labour Practice - Duty of Fair Representation - Practice and Procedure - Reconsideration  
- Board declining applicant's request to provide him with copy of chair's hearing notes -  
Reconsideration application dismissed

ANTOINE A. PLENNEVAUX; LIUNA, LOCAL 1036 ..... (May) 593

Unfair Labour Practice - Duty of Fair Representation - Practice and Procedure - Reconsideration  
- Complainant's request for reconsideration made six months after Board's decision - Board  
finding no reason to abridge time limit for reconsideration requests established by Rule 85 -  
Application for reconsideration dismissed

REGINALD FITZGERALD; RE ALEX KEENEY, LOCAL 200, C.A.W.; RE FORD  
MOTOR COMPANY LTD. .... (Nov.) 1535

Unfair Labour Practice - Duty of Fair Representation - Ratification and Strike Vote - Witness -  
Applicant alleging that union breached *Act* when it negotiated and secured employee ratifi-  
cation of agreement permitting third shift in employer's Oshawa truck plant - Applicant  
complaining about process by which agreement concluded - Applicant also complaining  
about conduct allegedly intended to intimidate or penalize witnesses in Board proceeding -  
Board concluding that allegations without foundation - Application dismissed

MARY ANNE GREEN, CAW LOCAL 222 UNION MEMBER; RE JOHN CAINES,  
CAW LOCAL 222 UNION PLANT CHAIRPERSON; RE GENERAL MOTORS OF  
CANADA LIMITED ("GMCL") ..... (June) 677

Unfair Labour Practice - Duty to Bargain in Good Faith - First Contract Arbitration - Interest  
Arbitration - Practice and Procedure - Employer complaining of bad faith bargaining where  
union put certain issues to interest arbitrator which had not been pursued in bargaining -  
Board finding nothing illegal about raising "new" issues or changing position in course of  
submissions to arbitration - Once arbitration process invoked, it is for arbitrator to decide  
what terms of first agreement will be - Board concluding that facts pleaded disclosing no  
violation of the *Act* - Application dismissed

CENTRE JUBILEE CENTRE; RE USWA, GERRY LORANGER, BRIAN  
SHELL ..... (July) 821

Unfair Labour Practice - Duty to Bargain in Good Faith - Interim Relief - Remedies - Board  
making interim order directing employer to permit union to post notice of union meetings  
and information concerning collective bargaining - Employer directed to immediately post  
notice of union membership meeting produced by union at hearing - Employer also  
directed to meet with union's bargaining committee within 14 days in order that parties bar-  
gain in good faith and make every reasonable effort to make a collective agreement

REYNOLDS-LEMMERZ INDUSTRIES; RE CAW - CANADA ..... (Nov.) 1578

Unfair Labour Practice - Duty to Bargain in Good Faith - Interim Relief - Remedies - Union  
alleging violation of employer's duty to bargain in good faith in failing to disclose during  
bargaining *de facto* decision to close logging camp - Union seeking interim order that camp  
be re-opened - Interim order would require employer to return heavy equipment already  
moved out, and to reverse notification, bumping a re-assignment process that had already  
taken place - Union failing to act promptly in filing its application with Board - Balance of  
harm weighing in respondent's favour - Application dismissed

AVENOR INC.; IWA CANADA, LOCAL 2693 ..... (Apr.) 340

Unfair Labour Practice - Duty to Bargain in Good Faith - Lock-Out - Following rejection by union of employer's final offer, employer locking-out employees and subsequently permanently closing business - Union then accepting offer, but employer taking position that offer no longer available - Board dismissing complaint that employer bargaining in bad faith by refusing to execute collective agreement on terms set out in its final offer - Board not satisfied that employer's lock-out of employees and subsequent closing unlawfully motivated - Complaints dismissed

THE PEEL COUNTY RESTAURANT; CTCU..... (Feb.)

186

Unfair Labour Practice - Employer - Interference in Trade Unions - Intimidation and Coercion - Judicial Review - Settlement - Stay - Strike - Strike Replacement Workers - "Home Cares" contracting with various "service provider" agencies, including Red Cross, to provide various therapeutic and support services to clients in their homes - Red Cross employees commencing legal strike - Home Cares arranging for other service providers to attend to clients - Union alleging breach of statutory ban on use by employer of strike replacement workers - Board not accepting union's argument that Home Cares actually true "employer" in this case or that Home Cares and service providers "acting on behalf" of Red Cross - Applications under section 73.1 and 73.2 dismissed - Board finding that letter sent to Red Cross employees suggesting that employees might lose their jobs if they commenced or stayed on strike violating the Act - Red Cross applying for judicial review on ground that subject matter of Board's unfair labour practice finding had been settled by parties and withdrawn - Red Cross seeking stay of Board's decision pending determination of judicial review application - Stay application dismissed

THE CANADIAN RED CROSS SOCIETY (ONTARIO DIVISION); RE ONTARIO LABOUR RELATIONS BOARD AND THE SERVICE EMPLOYEES INTERNATIONAL UNION, LOCALS 204 AND 532 ..... (Oct.)

1466

Unfair Labour Practice - Employer - Interference in Trade Unions - Intimidation and Coercion - Strike - Strike Replacement Workers - "Home Cares" contracting with various "service provider" agencies, including Red Cross, to provide various therapeutic and support services to clients in their homes - Red Cross employees commencing legal strike - Home Cares arranging for other service providers to attend to clients - Union alleging breach of statutory ban on use by employer of strike replacement workers - Board not accepting union's argument that Home Cares actually true "employer" in this case or that Home Cares and service providers "acting on behalf" of Red Cross - Applications under sections 73.1 and 73.2 dismissed - Board finding that letter sent to Red Cross employees suggesting that employees might lose their jobs if they commenced or stayed on strike violating the Act

RED CROSS SOCIETY ONTARIO DIVISION, THE CANADIAN, VICTORIAN ORDER OF NURSES BRANT-HALDIMAND-NORFOLK, COMCARE (CANADA) LIMITED, MED CARE PARTNERSHIP, THE VISITING HOMEMAKERS ASSOCIATION OF HAMILTON-WENTWORTH, HAMILTON-WENTWORTH HOME CARE PROGRAM - VICTORIAN ORDER OF NURSES AND VICTORIAN ORDER OF NURSES RESPITE PROGRAM, THE REGIONAL MUNICIPALITY OF HAMILTON-WENTWORTH, OLSTEN HEALTH CARE SERVICES, MEDICAL PERSONNEL POOL (HAMILTON) LTD., MOHAWK MEDICAL SERVICES, PARA-MED HEALTH SERVICES AND BRANT COUNTY HOME CARE PROGRAM, VETERANS AFFAIRS CANADA; RE S.E.I.U., LOCAL 204 AND LOCAL 532 ..... (Jan.)

34

Unfair Labour Practice - Interference in Trade Unions - Employer prohibiting wearing of union buttons on threat of discipline violating the Act - Application allowed

METROLAND PRINTING, PUBLISHING AND DISTRIBUTING; RE SOUTHERN ONTARIO NEWSPAPER GUILD ..... (June)

738

Unfair Labour Practice - Interference in Trade Unions - Interim Relief - Intimidation and Coer-

cion - Remedies - Trusteeship - Union Successor Status - Local 75 of Hotel employees' union purporting to disaffiliate from union - Local placed under trusteeship - Local 75 filing unfair labour practice complaint against union and named employer in connection with employer's decision to retain dues in escrow - Local 75 seeking interim order directing employer to remit dues to it - In response to Local 75's application, union filing its own unfair labour practice complaint, its own successor rights application under section 63 of the Act, and its own interim relief application - Board not persuaded that any interim order warranted at this stage - Application for interim relief dismissed

WESTBURY HOWARD JOHNSON HOTEL ["THE WESTBURY"], AND H.E.R.E. ["THE PARENT UNION"]; RE H.E.R.E., LOCAL 75 ["LOCAL 75"] ..... (Aug.) 1166

Unfair Labour Practice - Interference in Trade Unions - Interim Relief - Intimidation and Coercion - Remedies - Union seeking interim relief in connection with unfair labour practice complaint alleging that demotion of employee from group leader position violating the Act - Board directing that employee be reinstated to his position on interim basis pending final disposition of unfair labour practice complaint

LEO SAKATA ELECTRONICS (CANADA) LTD.; RE IWA CANADA ..... (Oct.) 1359

Unfair Labour Practice - Interference in Trade Unions - Intimidation and Coercion - Lock-Out - Strike - Strike Replacement Workers - Board providing reasons for earlier bottom-line decision in respect of lock-out and violation of section 73.1 of the Act - Wearing of union T-shirts in workplace lawful activity protected by Act - Employer's refusal to allow employees wearing such T-shirts to work amounting to lock-out - Employer violating section 73.1 of the Act by using services of other employees in bargaining unit during lock-out - Board directing employer to cease and desist from using services of employees in bargaining unit so long as lock-out continuing

MISSISSAUGA HYDRO ELECTRIC COMPANY; RE IBEW, LOCAL 636 ..... (Oct.) 1376

Unfair Labour Practice - Interference in Trade Unions - Intimidation and Coercion - Lock-Out - Strike - Strike Replacement Workers - Wearing of union T-shirts in workplace lawful activity protected by Act - Employer's refusal to allow employees wearing such T-shirts to work amounting to lock-out - Employer violating section 73.1 of the Act by using services of other employees in bargaining unit during lock-out - Board directing employer to cease and desist from using services of employees in bargaining unit so long as lock-out continuing

MISSISSAUGA HYDRO ELECTRIC COMPANY; RE IBEW, LOCAL 636 ..... (July) 883

Unfair Labour Practice - Interference with Trade Unions - Intimidation and Coercion - Board finding employer's remarks to group of employees calculated to use promises to undermine union's legitimate authority as bargaining agent and thus interfering with union's representation of its members - Application allowed

PHARMAPHIL, A DIVISION OF R.P. SCHERER CANADA INC.; RE UFCW, LOCAL 175 AND 633 ..... (June) 770

Unfair Labour Practice - Interim Relief - Remedies - Union seeking interim reinstatement of 28 employees laid off as result of employer's decision to contract out warehousing operations - Union's delay in bringing interim relief application and other factors weighing against making interim order - Application dismissed

WILLIAM NEILSON LTD.; RE MILK AND BREAD DRIVERS, DAIRY EMPLOYEES CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647 ..... (Mar.) 326

Unfair Labour Practice - Judicial Review - Sale of a Business - Respondent appointed by Ontario Court (General Division) as receiver and manager of nursing home in December 1991 - Union complaining that respondent failing to adhere to collective agreement between union and nursing home and refusing to bargain with union - Board finding respondent to be suc-



cessor employer for purposes of of the Act - Board remitting issues to parties for consideration and remaining seized - Receiver's application for judicial review dismissed by Divisional Court

DELOITTE & TOUCHE INC., IN ITS CAPACITY AS COURT APPOINTED RECEIVER AND MANAGER OF OTTAWA NURSING CENTRE NURSING HOME, AND NOT IN ITS PERSONAL CAPACITY; RE CUPE, LOCAL 1343...(Nov.)

1608

Unfair Labour Practice - Picketing - Strike - Employer seeking order to restrict alleged "unlawful picketing" and give it access to main receiving doors of struck store - Statute directing Board to focus not on lawfulness of picketing, but to balance newly conferred statutory picketing rights with applicant's operations to avoid undue disruption - Board adopting functional approach - Board declining to impose restrictions on picketing and dismissing employer's application under section 11.1 of the *Act* - Board dismissing union's complaint that employer engaged in strike related misconduct contrary to section 73 of the *Act*

THE GREAT ATLANTIC & PACIFIC COMPANY OF CANADA LIMITED, THE PARTNERS OF MILLER THOMSON, BARRISTERS AND SOLICITORS, DIRK VAN DE KAMER; RE UFCW, LOCALS 175 AND 633 ..... (July)

909

Unfair Labour Practice - Picketing - Strike - Strike Replacement Workers - Right of Access - Board finding that company violated section 73.1 of the *Act* by using managers from non-struck stores to perform bargaining unit work at struck locations - Board making declaration and issuing cease and desist order - Employer seeking order restricting picketing at struck locations - Board analyzing provisions of section 11.1 of the *Act* and discussing Board's dual role in protecting statutory right to picket and in limiting exercise of that right in particular circumstances - Board finding evidence insufficient to persuade it that restrictions on picketing appropriate to prevent undue disruption of employer's operations - Application under section 11.1 of the *Act* dismissed

THE GREAT ATLANTIC & PACIFIC COMPANY OF CANADA LIMITED; RE UFCW, LOCALS 175 AND 633, BRIAN DONAGHY, DARRIN FAY, FRANK FORTUNATO, RICK FOX, HELMUT HALLA, ROBERT LIOTTI, DONALD LUPTON, GENE MARTIN, PAM MURDOK, PATRICIA O'DOHERTY, KATHY PAPACONSTANTINO, IRENE PARK AND CLIFF SKINNER ..... (Mar.)

303

Unfair Labour Practice - Ratification and Strike Vote - Reconsideration - Settlement - Strike - Strike Replacement Workers - Employer seeking reconsideration of Board decision finding that employer unlawfully using strike replacement workers - Board not permitting employer to resile from its earlier agreement with union that conditions in subsections 73.1(2) and (3) had been met - Reconsideration application dismissed

MARRIOTT MANAGEMENT SERVICES; RE CUPE AND ITS LOCAL 229 ..... (Aug.)

1018

Unfair Labour Practice - Ratification and Strike Vote - Strike - Employee complaining about secrecy of strike vote 8 weeks after the vote and 3 weeks into the strike - Board finding applicant's delay in making application to be significant and without reasonable explanation - Board exercising its discretion against inquiring further into merits of application

MARRIOTT MANAGEMENT SERVICES; RE VICTOR CARQUEZ; RE CUPE AND ITS LOCAL 229 ..... (July)

857

Unfair Labour Practice - Ratification and Strike Votes - Reconsideration - Strike - Strike Replacement Workers - Union making application in respect of alleged unlawful use replacement workers during strike - Issue arising as to whether section 73.1 of the *Act* applying - Board not satisfied that strike vote conducted by union in accordance with sec-

tion 74(4) to (6) - Unfair labour practice complaint and reconsideration application dismissed

TOROMONT INDUSTRIES LTD., TOROMONT, A DIVISION OF; RE THE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 112 .....(Aug.)

1149

Unfair Labour Practice - Strike - Strike Replacement Workers - Employer asserting right to have struck work performed by persons engaged, hired or transferred into pre-existing managerial positions after date of notice to bargain, so long as there is no net increase in size of employer's managerial complement - Board not accepting employer's assertion - Employer's use of various persons to perform struck found to violate *Act* - Complaint allowed - Cease and desist order issuing

MARRIOTT MANAGEMENT SERVICES; RE CUPE AND ITS LOCAL 229 ..... (June)

729

Unfair Labour Practice - Strike - Strike Replacement Workers - Employer submitting that preconditions for application of section 73.1 of the *Act* not met because of various aspects surrounding strike vote, including length of time between vote and calling the strike, wording of ballot and other matters - Board deciding that preconditions satisfied - Board ruling that manager who had been promoted from bargaining unit after giving of notice to bargain precluded from doing struck work - Board finding that driving not work ordinarily performed by anyone and that performance of such work during the strike not violating the *Act* - Board ruling that use of non-bargaining unit 'occasional' workers to do struck work violating the *Act* - Employer directed to cease and desist from using replacement workers in breach of section 73.1 of the *Act*

CANADA STAMPING AND DIES LIMITED; RE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) AND ITS LOCAL 636 .....(Mar.)

213

Unfair Labour Practice - Strike - Strike Replacement Workers - Municipal electric utility's "outside workers" striking - Employer using certain non-managerial replacement workers to perform struck work - Union alleging that employer violating *Act* by using non-managerial replacement workers from "another of the employer's places of operations" to perform work of striking employees at "place of operations in respect of which strike taking place" - Board concluding that locations at which replacement workers were working during strike and places at which they ordinarily work not constituting separate "places of operations" within meaning of section 73.1(6)1 of the *Act* - Complaint dismissed

THE HYDRO ELECTRIC COMMISSION OF THE CITY OF OTTAWA; IBEW, LOCAL 636 ..... (Sept.)

1265

Unfair Labour Practice - Strike - Strike Replacement Workers - Subsequent to commencement of strike by projectionists, manager at struck movie theatre assigned to theatre in Montreal where she worked several hundred hours as projectionist in order to complete apprenticeship - Manager then returning to struck location and doing work of striking projectionists - Board finding that assignment to struck location amounting to "transfer" within meaning of the *Act* - Employer violating *Act* by transferring manager to struck location after date of notice to bargain - Employer directed to stop using manager to do bargaining unit work

FAMOUS PLAYERS INC.; RE IATSE, LOCAL 357 ..... (Feb.)

131

Union Successor Status - Evidence - Practice and Procedure - Reconsideration - Objecting employees seeking reconsideration of Board's decision declaring Steelworkers' to be successor union to RWDSU on grounds that the employer had posted no notice of the proceeding in the workplace - At conclusion of objecting employees' case, employer making motion for early dismissal of the reconsideration application - Board reviewing jurisprudence and policy considerations associated with procedures for facilitating swift, balanced

hearings which combine expedition and full opportunity to be heard - Board not requiring employer or Steelworkers' to make election as to whether to call evidence or not, but dismissing employer's motion

THE GREAT ATLANTIC & PACIFIC COMPANY OF CANADA, LIMITED; RE RWDSU, AFL-CIO-CLC AND ITS LOCAL AFFILIATES RWDSU AFL-CIO-CLC, LOCAL 414, 429, 545, 579, 582, 915 AND 991; RE RWDSU, CANADIAN SERVICE SECTOR DIVISION OF THE USWA, LOCAL 414.....(Aug.)

1127

Union Successor Status - Interference in Trade Unions - Interim Relief - Intimidation and Coercion - Remedies - Trusteeship - Unfair Labour Practice - Local 75 of Hotel employees' union purporting to disaffiliate from union - Local placed under trusteeship - Local 75 filing unfair labour practice complaint against union and named employer in connection with employer's decision to retain dues in escrow - Local 75 seeking interim order directing employer to remit dues to it - In response to Local 75's application, union filing its own unfair labour practice complaint, its own successor rights application under section 63 of the Act, and its own interim relief application - Board not persuaded that any interim order warranted at this stage - Application for interim relief dismissed

WESTBURY HOWARD JOHNSON HOTEL ["THE WESTBURY"], AND H.E.R.E. ["THE PARENT UNION"]; RE H.E.R.E., LOCAL 75 ["LOCAL 75"].....(Aug.)

1166

Union Successor Status - Trade Union - Trade Union Status - OSSTF applying for declaration that it is successor union to Association of Schedule II Employees - Board concluding that fact that Association's constitution permits admission of non-employees and that it in fact does so would not in itself prevent Association from being considered a trade union within meaning of the Act - Parties directed to meet for pre-hearing conference

THE BOARD OF EDUCATION FOR THE CITY OF TORONTO; RE THE OSSTF.....(Aug.)

1098

Witness - Adjournment - Construction Industry - Evidence - Judicial Review - Jurisdictional Dispute - Natural Justice - Practice and Procedure - Carpenters' and Sheet Metal Workers' unions disputing assignment of work in connection with handling, distribution, rigging, erection and installation of sheet metal siding onto wood - Board confirming assignment to members of Sheet Metal Workers' union - Board summarizing various evidentiary and procedural rulings made during lengthy proceeding - Board not allowing Carpenters' union to call area practice evidence to the extent that its materials had not been properly particularized - Board not permitting Sheet Metal Workers' union to call witness who had already once testified - Other than in reply, a party should not be permitted to recall a witness except in extraordinary circumstances - Carpenters' union moving to terminate proceedings after 10 days of hearing following settlement of its grievance (which constituted initial demand for work in dispute) - Motion to terminate proceedings dismissed - Board noting that jurisdictional dispute proceedings should not generally be terminated after hearing on the merits has begun where it is clear that jurisdictional dispute still exists - Carpenters' union applying for judicial review on grounds of alleged denial of natural justice - Divisional Court dismissing application with costs

VIC WEST STEEL LIMITED, ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE, SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL 539 AND OLRB; RE CJA, LOCAL 1256..... (June)

803

Witness - Duty of Fair Representation - Ratification and Strike Vote - Unfair Labour Practice - Applicant alleging that union breached *Act* when it negotiated and secured employee ratification of agreement permitting third shift in employer's Oshawa truck plant - Applicant complaining about process by which agreement concluded - Applicant also complaining



about conduct allegedly intended to intimidate or penalize witnesses in Board proceeding -  
Board concluding that allegations without foundation - Application dismissed

MARY ANNE GREEN, CAW LOCAL 222 UNION MEMBER; RE JOHN CAINES,  
CAW LOCAL 222 UNION PLANT CHAIRPERSON; RE GENERAL MOTORS OF  
CANADA LIMITED ("GMCL") ..... (June)









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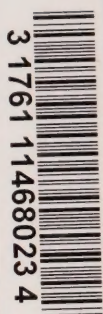












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